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Senate

(Legislative day of Monday, July 10, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, whose mercies are new every morning and whose presence sustains us through the day, we seek to glorify You in all we do and say. You provide us strength for the day, guidance in our decisions, vision for the way, courage in adversity, help from above, unfailing empathy, and unlimited love. You never leave us or forsake us; nor do You ask of us more than You will provide the resources to accomplish. Here are our minds, think Your thoughts in them; here are our hearts, express Your love and encouragement through them; here are our voices, speak Your truth through them.

We dedicate this day to discern and do Your will. We trust in You, dear God, and ask You to continue to bless America through the leadership of the women and men of this Senate. Help them as they grapple with the problems and grasp Your potential for the crucial issues before them today. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. SMITH. Mr. President, on behalf of the majority leader, for the benefit of my colleagues, I would like to announce the Senate schedule.

Leader time is reserved. There will be a period of morning business until 10 a.m. this morning. At 10 a.m. the Senate will resume consideration of S. 343, the regulatory reform bill, with the Glenn substitute amendment pending.

The Senate will then stand in recess from 12:30 to 2:15 p.m., to accommodate the respective party luncheons. At 2:15 p.m., under a previous order, there will be two consecutive rollcall votes. The first will be a 15-minute vote on the Glenn substitute amendment, followed by a vote on the motion to invoke cloture on the Dole-Johnston substitute amendment, which will be 10 minutes in length.

The votes ordered for 2:15 p.m. are not necessarily the first votes of the day. Rollcall votes are expected throughout the day and a late night session is possible in order to make progress on the regulatory reform bill.

Finally, Senators are reminded that under rule XXII, second-degree amendments to the Dole-Johnston substitute must be filed by 12:30 p.m. today in order to qualify postcloture. Also, in connection with the third cloture motion, filed yesterday on the Dole-Johnston substitute, any further first-degree amendments must be filed by 12:30 p.m. today.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business.

The Senator from South Carolina.

THE CRISIS IN BOSNIA

Mr. THURMOND. Mr. President, last week the Bosnian town of Srebrenica, a so-called U.N. protected area, fell to Bosnian Serbs. In scenes reminiscent of the genocide of World War II, Serb troops rounded up Bosnian Moslems and forcibly expelled thousands of women, children, and the elderly from their homes. Military-age men were held captive, and there are reports that some have been murdered. Rapes and other atrocities are reported as well.

This week Zepa, another U.N. protected area in eastern Bosnia, is about to fall to the Serbs. The U.N. protected area of Gorazde is under attack. Serbs inside the U.N. exclusion zone around Sarajevo are shelling the city and killing innocent civilians in that U.N. protected area. In the northeast, the U.N. safe haven of Bihac remains cut off and threatened.

Throughout Bosnia today, we see the triumph of Serbian aggression, aided and abetted by confusion and inaction on the part of the United Nations and the Western democracies.

Mr. President, what is the response of the Western democracies to the atrocities and brutal aggression of the Serbs? The response is another U.N. Security Council resolution, calling on the Secretary General to restore the safe haven of Srebrenica. In Bosnia, the United Nations spokesmen issue more empty threats, hollow denunciations, and vain demands. It would be better to say nothing at all than to engage in such futile bluster, which only invites the contempt of the world.

One definition of stupidity is to do the same thing over and over again and expect a different result. This certainly characterizes the policy of the administration and our Western allies. Its failure is apparent for anyone to see,

and yet we persist in following the same discredited course.

UNPROFOR has been emasculated and cannot protect its own forces, much less the U.N. protected areas, which are becoming traps for desperate Bosnians who relied upon U.N. promises. Humanitarian aid is being blocked. It is clear that the Bosnian Serbs are in control of the situation, and the United Nations is allowed to carry out its mission only when the Bosnian Serbs allow it. In short, UNPROFOR cannot carry out the U.N. Security Council mandates that justify its presence. Despite good intentions and valiant efforts, UNPROFOR has failed—failed on its own terms. Now humiliation and disgrace are compounding the failure.

What does it take, Mr. President? When will the U.N., the United States, and our allies accept the reality that the Bosnian crisis has deteriorated beyond our ability to salvage it?

Britain, France, and Holland have pinned their hopes on the new rapid reaction force. They are sending in 12,000 more troops to support UNPROFOR. Out of solidarity with our allies, the United States is providing sealift, airlift, and military equipment. But in my view, the rapid reaction force is not going to prevent the situation from deteriorating further, or stop the Serbs from overrunning of the safe havens. The rapid reaction force has been rendered ineffective before it ever got off the ground. As long as it remains under U.N. operational control it will not be rapid, nor reactive, nor even a force.

I do not understand why the administration persists in supporting the status quo no matter how discredited the current policy becomes. Administration officials have testified numerous times that the United States does not have sufficient national interests at stake in Bosnia to justify sending American ground troops and becoming a combatant in the conflict. I agree completely, and so do the American people. Administration officials have also testified that the best way to serve the national interests of the United States is to keep UNPROFOR in Bosnia so that it can work to limit the suffering of the innocent, and to keep the conflict from spreading while the contact group seeks a diplomatic solution.

I wholeheartedly support the goals of relieving the suffering and containing the conflict. What I can no longer support is the proposition that the status quo, which relies upon an ineffectual U.N. peacekeeping mission and more diplomatic efforts, is the best way to achieve these goals. I am forced to ask: How many more diplomatic discussions have to take place? Intense diplomacy has been going on for years without any resolution.

The Administration appears to believe that the responsibility for any resulting disaster will fall on the United States if UNPROFOR withdraws. I do not agree. The world community placed the fate of Bosnia in the hands of the United Nations, but the United Nations has been unable to keep a nonexistent peace. That is no more the fault of the United States than of any other U.N. member. In any case, the world cannot be blamed for trying a collective approach. But there is plenty of blame to go around if the United States and our allies persist in following a course that has clearly failed. Increasing the number of U.N. peacekeepers or keeping UNPROFOR in Bosnia will only prolong the agony, complicate matters further, and block the possibility of other solutions.

Mr. President, the situation in Bosnia is terribly complex, and there are no easy answers. Any course of action has potential pitfalls. But there is also a penalty for doing nothing, or for remaining mired in the status quo.

In my view, the administration has failed to properly evaluate the damage to U.S. leadership and credibility, and to the Western alliance, from supporting the status quo. The credibility of NATO as well as of the United Nations have been severely undermined. It is a serious mistake to continue subordinating NATO to the United Nations out of a misguided desire to restore the United Nations lost credibility. The longer the present situation continues, the greater the damage to the health and solidarity of the Western alliance. We cannot afford to let NATO to become a casualty of the Bosnian tragedy.

The fall of Srebrenica and the imminent fall of Zepa make it quite clear—UNPROFOR has become impotent and must withdraw. There is no excuse for leaving U.N. troops in such a dangerous and untenable position any longer. There is no excuse for continuing to incur the huge expense of the failed U.N. mission. We can no longer tolerate a policy based on denial and avoidance of reality.

I believe it is past time for the Congress to focus its attention on getting the U.N. out of Bosnia. If the administration is reluctant to support a U.N. withdrawal because it fears a negative political reaction, then now is the time for Congress to show leadership, and to make it clear that the United States will assist in extricating our allies from the Bosnian quagmire. But we must work together—the executive branch and Congress—and reach a consensus as soon as possible. Further delays in getting ready to execute the NATO withdrawal plan will push the plan's execution into the winter months, making it far more difficult and dangerous for United States and NATO troops to carry out.

Mr. President, Congress needs to send a clear signal now to the President that we will support the participation of U.S. troops in a U.N. withdrawal operation. Of course, as the President has agreed, it must be totally under NATO command. Once our troops are committed, there can no longer be any dual-key arrangement between the United Nations and NATO. There must also be robust rules of engagement, allowing the use of overwhelming force for any attacks on NATO or on UNPROFOR. The scope and duration of the withdrawal mission must be limited. I do not advocate a date certain for ending it, but it must end promptly when all UNPROFOR and NATO troops are safely out. It must not be transformed at some point into a peace enforcement mission.

Mr. President, the United States cannot stand idly by while U.N. troops from allied nations are in mortal danger. The damage to U.S. leadership, honor, prestige, and credibility would be beyond calculation. These are not mere words. Credibility, prestige, and national honor are essential components of national security, as they have always been. They are especially important if we are to exercise the moral leadership expected of the world's only superpower.

If Americans want to remain secure in today's violent and chaotic world, we must never permit doubts to exist in the minds of friends or enemies that our word is good, or that we can be relied upon to stand with our allies, or that we will keep our commitments. The credibility that comes from demonstrated steadfastness of purpose is a key aspect of deterrence. It is an essential though intangible element of global power, and of the necessary relations between states. A great nation cannot remain great very long without it.

That is why we must end the charade of the U.N. presence in Bosnia, stand with our allies by assisting them to disengage, and then turn our attention to longer term solutions that will stop the agony in that troubled land.

I thank the Chair, and yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Georgia, Senator NUNN, is recognized to speak for up to 30 minutes.

INEFFECTUAL U.N. PROTECTION FORCES IN BOSNIA

Mr. NUNN. Mr. President, I too want to discuss the subject which the Senator from South Carolina has just addressed.

Mr. President, I believe that the continued presence of the ineffectual U.N. Protection Forces in Bosnia is eroding the credibility of the United Nations, of NATO, and of the United States.

I agree with the points that Senator THURMOND just made. In particular, I agree that the executive branch and the Congress must work together and reach a consensus as soon as possible. This situation is bad enough without the President and the Congress being in a big fight here. So we need to find a way to work together.

The second point that I agree with that Senator THURMOND made is that now is the time for the Congress to show leadership and to make it clear

that the United States will assist in extracting our allies from Bosnia. Congress cannot duck this question.

The third point that he made that I specifically agree with: The withdrawal operation must be totally under NATO command. There can be no ''dual-key'' arrangement. There must be robust rules of engagement. And the scope and the duration of the mission must be limited.

And, finally, I think the key point he made related to what the United States' role must be in the withdrawal; that is, the honor and credibility of our Nation are essential components, not only to our national security, not only to Bosnia, but to deterrence throughout the world. That is essential. Honor and credibility are essential parts of national security, and of deterrence. I completely agree with the Senator from South Carolina on that excellent point.

Mr. President, I will leave to another day the discussion of mistakes leading to the current human tragedy in Bosnia. The Bosnian-Serbs have overrun the U.N.-declared safe area of Srebenica, and they can take Zepa at any time of their choosing.

The United Nations Security Council has passed another meaningless resolution calling upon Secretary General Boutros Ghali to restore Srebrenica to its safe area status. Of course, none of the Security Council members has told the beleaguered Secretary General how to perform that task.

The French have declared their readiness to fight for Gorazde if the British will join them and if the Americans will supply tactical airlift. The French are clearly paving the way for their withdrawal from Bosnia unless there is a determined U.N. stand with British and American assistance.

The British have raised serious reservations about the French proposals and the French approach, both publicly and privately.

General Shalikashvili has met with his counterparts from Britain and France for the purpose of preparing immediate options for the national leaders to consider, and I assume that consideration will be made in the next few days.

Secretary Perry and Secretary Christopher will be meeting with their counterparts later this week.

The Clinton administration is urging our allies to remain in Bosnia, refusing to commit United States forces on the ground, continuing to distance itself from any ''unjust settlement'' and pledging to help extract our allies from Bosnia if they withdraw.

This week the Senate will plunge into this morass by legislating on Bosnia. I believe that Congress has an important role to play in foreign policy matters. I always have felt that. At the same time, I do not believe Congress as a rule should attempt to legislate the details of United States foreign policy. But if we do choose to legislate on Bosnia:

We must not remove the President's flexibility to react to unpredictable situations in which American lives are at stake;

We should not force our allies and our other U.N. forces to withdraw—advocating withdrawal is one thing, forcing it by legislation is another thing entirely. We need to distinguish between speeches and legislation; and

We should not and must not avoid the hard questions which will inevitably flow from congressional actions. There are hard questions that have not yet fully been considered by either the House or the Senate in my view.

Mr. President, many of our colleagues want to—I use these terms in shorthand—''lift and leave.'' By that I mean lift the embargo and leave the Bosnians to fend for themselves. The House of Representatives passed this type of legislation. We in the Senate debated this type legislation and passed it on one occasion last year.

This school of thought seems to believe that a simple repeal of the American export prohibition will automatically equalize the conflict. It glosses over the questions of who will pay for the weapons; who will deliver them; how will they be delivered; and who will help train the Bosnian troops.

To be fair, there are those, including the majority leader, Senator DOLE, Senator LIEBERMAN, Senator BIDEN, and others, who have advocated unilaterally lifting the arms embargo but who would also support the supply of United States equipment and United States training to Bosnian Government forces. But many of those whose votes are needed to pass the Dole-Lieberman bill are unwilling to make such a commitment, and the Dole-Lieberman approach leaves these questions unanswered. This is a large gap.

Mr. President, another view in the Senate which heretofore has been a minority view—and this has been a view that I have had—is that the embargo should be lifted but only after U.N. forces have left Bosnia.

There are also those in the Senate who have a third view, who agree with the administration that the U.N. forces should remain in Bosnia. In my view, this is a distinctly minority view.

Mr. President, the overwhelming majority of the Senate in my view support either the lift-and-leave approach or the leave-then-lift alternative approach. The Dole-Lieberman proposed legislation now seems to have moved substantially toward the leave-then-lift approach. That is important. They are moving in their resolution toward the position of leave first, then lift the embargo. That is a key distinction, and that is a distinction that has separated those of us on the two sides of this issue in the Senate for the last 12 months.

Mr. President, this is a very significant change in the Dole-Lieberman proposal that has been overlooked by most people in the press corps, many critics of the bill, and even many supporters of the bill.

The latest version of the Dole-Lieberman bill is a major improvement in my view in that it takes into account and into consideration some concerns of our NATO allies who have forces on the ground in Bosnia by delaying the implementation of the termination of the Bosnian embargo until the U.N. forces withdraw. That is a key difference from the approach that was taken in past resolutions. Additionally—and I think very importantly—the new Dole-Lieberman proposal puts the onus or responsibility on the Government of Bosnia and the troop contributing countries to decide if the U.N. forces should stay in Bosnia.

It does this by terminating the embargo based on either of two conditions:

Condition 1: a Bosnian Government request that the U.N. forces withdraw from Bosnia; or

Condition 2: a decision by the U.N. Security Council or the UNPROFOR troop-contributing countries to withdraw the U.N. forces.

As I understand the Dole-Lieberman proposal, if condition 1 is met, implementation of the termination of the embargo would be delayed until 12 weeks after the Bosnian Government requests that the United Nations be withdrawn. If, on the other hand, condition 2 is met—that is, the troops of the contributing countries decide to leave without a request from the Bosnian Government—termination of the embargo would be delayed until such time as the U.N. forces have been withdrawn from Bosnia.

This is in my view a much different proposal than what we have debated in the past. It is much different from what has passed the House of Representatives. It is a much more responsible approach than the original proposal which lifted the embargo unilaterally without regard for the continued U.N. troop presence in Bosnia.

Mr. President, I say all of that on the positive side of the Dole-Lieberman amendment. The key missing ingredient, however, of the new Dole-Lieberman amendment is any mention of what should be obvious to all and what must be obvious during the debate on this proposal to those of us in the Senate, and I hope to the country; namely, that the President of the United States has publicly pledged to deploy up to 25,000 United States troops on the ground, if necessary, in Bosnia to help extract the U.N. forces.

Mr. President, Congress cannot responsibly legislate on Bosnia and ignore this fact. If Congress wants to prevent United States ground forces from assisting our allies in withdrawing from Bosnia, we should make that clear. If Congress wants the allies and the United Nations to withdraw from Bosnia and is willing to support President Clinton's commitment, Congress should make that clear. Congress cannot responsibly advocate a course of

action and pretend to ignore the inevitable and certain consequences of that action.

If the United Nations withdraws from Bosnia, United States participation to assist our allies to withdraw from Bosnia would be required and has been publicly committed by the President of the United States. The Dole-Lieberman bill, at this time, is silent on this crucial point. If this legislation is passed as written, in my view, it will send a loud signal by its silence. It will send a loud signal that Congress is prepared to advocate a course of action but is not prepared to back it up.

Over the last 3 years, we have witnessed a lowest common denominator approach in the United Nations, in NATO, among our allies, and in United States policymaking regarding Bosnia. Every policy decision on Bosnia seems to be reduced to what Winston Churchill, if he were with us today, would certainly describe as ''mush, gush, and slush.'' We see this in the so-called mandates of the U.N. Security Council. We see this in the U.N.-NATO dual key command structure. We see this in the statements of the members of the U.N. Security Council who have voted for every Security Council resolution for the last 4 years but who act as though the United Nations is some outer space alien of which they never heard.

Mr. President, we see this in the position of many in this administration, in this Congress, and in the news media who for the last 2 years have decried any ''unjust solution'' but who have been unwilling to commit American resources for a just solution, and unwilling to admit that there never will be a just solution in Bosnia unless the United Nations and NATO are willing to impose it by force.

Mr. President, that is reality. There will never be a just solution in Bosnia unless the United Nations and NATO are willing to impose it by force.

I hope, as the Senate debates the Dole-Lieberman bill this week, that we will not continue and even add to the lowest-common-denominator approach that has been so evident in all the Bosnia decisions by international and by other bodies.

There is no good solution to the Bosnian tragedy. There is no easy solution. There is no solution that anyone can guarantee is going to work. Some approaches, in my view, are worse than others, but all have unwelcome consequences. The American people are entitled to understand the possible consequences as we debate this issue.

What would be the consequences if the U.N. forces withdraw? NATO has been putting together a plan to withdraw the U.N. forces. This plan calls for deployment of up to 82,000 troops, some 25,000 of whom would be American military personnel based on the commitment of the President of the United States pursuant to his pledge to our NATO allies. This is a sizable force but, in my view, it is a necessary force, given the topography of Bosnia and the history of that conflict and the history of that region.

This large force may be deemed by some to be a worst-case force, but it makes a worst case much less likely to occur. Our military leaders have been candid in telling us, both in testimony and in private discussions, that this withdrawal operation could be very dangerous. I think they are right. There is also a possibility, however, that the withdrawal could be relatively unimpeded by both sides. It could proceed rapidly; it could proceed effectively. No one knows or pretends to know how dangerous this will be, but prudence and careful planning are absolutely essential.

Mr. President, we should note that the NATO plan makes no provision for the withdrawal of refugees. Everyone should understand that. There is no provision in that NATO plan for withdrawal of refugees. Our military commanders, in fact, concede that one of the most difficult aspects of a withdrawal operation will be dealing with Bosnian civilians. They may attempt to keep the U.N. forces and the NATO forces from leaving Bosnia out of fear that they will be prey to the attacking Serbs once the restraining presence of UNPROFOR is removed. They may do this regardless of what their Government may say publicly or privately.

We also must consider what will happen to the civilian population once the extensive humanitarian relief effort is no longer functioning there. A humanitarian tragedy is likely, and we should understand that as we debate this serious issue.

Both the Government of Bosnia and the Bosnian Serb leaders have publicly stated that they would assist the U.N. forces in withdrawing if the United Nations makes a decision to withdraw. But NATO military commanders, understandably, express concern about the following possibilities:

First, the sincerity and durability of these statements by leaders whose word in the past has been questioned; second, whether the warring parties will try to gain control of the tons of U.N. military equipment and supplies presently located in Bosnia; third, whether the Bosnian Serbs will be cooperative as they realize that the completion of the U.N. withdrawal will likely result in the lifting of the arms embargo on the Government of Bosnia; and fourth, the narrow and winding roads that make up much of Bosnia's transportation system. It will take little effort by a determined foe to destroy the numerous bridges and tunnels that are often the only ingress and egress to the numerous Bosnian towns and to Bosnia itself where the U.N. personnel are located. The Bosnian Serbs control much of the high ground around these roads and these towns.

From those who continue to advocate immediate and unilateral lift of the embargo, an intellectually honest approach requires facing up to the arming and training of the Bosnian Government forces. This course will likely require air support, assuming the Bosnian Serbs move in for the kill before the arming of the Bosnian forces is complete, which will, at best, take several weeks or months. It also requires recognition that our allies will pull out of Bosnia and hold the United States responsible for the Bosnian tragedy which may unfold if we unilaterally lift the embargo before the U.N. forces are out.

From those who advocate either immediate and unilateral lift of the embargo or, on the other hand, U.N. withdrawal followed by a lift of the arms embargo, in either event, under either course of action, intellectual honesty requires a congressional authorization or at least a congressional acknowledgment that U.S. forces will be used to help evacuate our NATO allies and the other U.N. forces.

Mr. President, from those who advocate keeping the U.N. forces in Bosnia, intellectual honesty requires the acknowledgment that these forces must be beefed up, probably with considerable United States help; that clear authority for military decisions must be delegated by the United Nations to NATO and the dual-key approach must be ended; and that exposed U.N. personnel all over Bosnia must be brought to more defensible positions so they are not simply hostages for one side. Each of these actions moves further and further away from the humanitarian mission, and each of these actions moves closer toward direct involvement in the conflict, and all should recognize that is what staying the course means.

If the embargo is lifted multilaterally after UNPROFOR departs, allied air support will be demanded by the Government of Bosnia. We already know that, those of us who have listened to them when they have been here or heard their public statements. They are going to demand that we owe them air support. That is going to be their demand.

If the embargo is lifted unilaterally before or after the date the U.N. forces depart, Congress and the American people must recognize that this burden will fall primarily on the United States because our allies, if we lift the embargo unilaterally, are not going to be anxious to participate. In either case, there is no assurance that the Bosnian Government will be able to defend their territory, even with air support.

Mr. President, as I have stated, there are no good solutions in Bosnia. I have my own views as to the approach the United Nations and the United States and our allies should follow in Bosnia.

First, there should be a final intense diplomatic effort to negotiate an end of the conflict in Bosnia. I am under no illusion that a diplomatic effort will be successful. It is not likely to be successful, but at least it should be tried, because all the other alternatives have tremendous downside consequences.

Second, the United Nations should serve notice on all parties that if a negotiated settlement is not reached within a specified period of time, the U.N. forces will be withdrawn from Bosnia. Both the Bush and Clinton administrations have urged our allies to commit their forces and to remain on the ground in Bosnia. When these forces are withdrawn, I believe the United States has a moral obligation to assist in their withdrawal. In our effort to save Bosnia, we must not destroy NATO.

Third, once the U.N. forces have been withdrawn, the Bosnian arms embargo should be lifted multilaterally, if possible, unilaterally if that is the only course. The United States and our allies should assist in arming and training the Bosnian Government forces, and that is going to cost some money and it is going to take some time. We all need to understand that.

Fourth, the allies and the contact group must devise a ''containment policy'' and make it clear to the government in Belgrade that it will be held fully responsible if this conflict spreads across other borders.

Mr. President, to sum up, legislating on Bosnia is fraught with danger. But if we are to legislate—and it appears that we are—we must understand the full consequences of our legislation. We must be willing to go on record as supporting or disapproving the commitment that President Clinton has made to our allies to help them withdraw from Bosnia. To do otherwise would be adding more ''mush, gush, and slush.''

I thank the Chair.

Mr. THURMOND. Will the Senator allow me about a minute and a half?

The PRESIDING OFFICER. The Senator from Georgia has 7½ minutes remaining.

Mr. NUNN. I yield 1½ minutes to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. I thank the able Senator from Georgia, the ranking member of the Armed Services Committee, for his appropriate and pertinent remarks on the situation in Bosnia. I strongly support the Dole-Lieberman bill and am pleased to be an original cosponsor of it.

As the Senate begins consideration of S. 21, the Dole-Lieberman bill, this week, I ask that Members consider and discuss the very important issue of U.S. support for a United Nations withdrawal. This support, with the aid of NATO, requires a very close and careful consideration and discussion by the Members of the Senate.

I yield the floor.

Mr. NUNN. Mr. President, I am not trying to control time here, but I have a little time left, and I will be glad to yield to the Senator from Nebraska 3 minutes.

Mr. EXON. Mr. President, I wish to associate myself completely with the remarks made by my learned and distinguished colleague from Georgia. I will oppose the Dole-Lieberman proposition, as I understand it, basically for the reasons brought forth in the carefully worded and well-thought-out statement made by the Senator from Georgia.

We have to look to the future. As bad as the situation is over there now—and I think no one feels that they have all of the right answers—we have to look to the future. I am afraid, Mr. President, that despite the good intentions of the Dole-Lieberman amendment, it clearly sows the seeds, which are ripe for harvest, for the beginning of the end of NATO.

The situation in Bosnia today is very bad, and the pictures that are coming through very loud and clear on television are horrifying, portraying the atrocities that are being taken in that most unfortunate war in Europe. However, I happen to feel that we should always try and walk in others' shoes. I simply say that if we take action today, or this week, we might regret it in the future, because it sows the seeds for the end of NATO, which has been a force for peace since World War II. And then we might look back on that action and say we probably acted in haste, we probably acted in compassion, but we probably acted in a way that would not be in the long-term best interest of peace in Europe and probably would go a long way to disrupting the NATO alliance and our friends and allies in Europe that have been a part of that.

This is a grave situation. I wish that our allies would agree to remove the peacekeeping forces because, seemingly, that is what both sides of the combatants there want. I happen to feel that the U.N. mission is doomed to failure under the circumstances that are present.

Nevertheless, unless and until our allies in NATO can be convinced of that, I say let us proceed with caution. I have grave concerns about the way we are going. I do not know the answers. I simply say that caution is a better part of valor at this particular juncture. I thank my friend from Georgia, and I yield the floor.

Mr. NUNN. I will yield whatever I have left to the Senator from Texas.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. NUNN. I will yield that to the Senator from Texas, and whatever she does not use, I will yield back.

Mrs. HUTCHISON. I ask unanimous consent to add 2 minutes onto the 3 minutes I have been yielded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, I appreciate the fact that several of my colleagues on the Armed Services Committee are talking today about the situation in Bosnia. It is clear that we cannot sit by and do nothing. We have talked about this issue for months.

Six weeks ago, I stood right on the border of Macedonia looking into Serbia. I was visiting our U.S. troops who were there on an outpost under the auspices of the United Nations. I saw the terrain; I talked to our troops, both in Croatia and Macedonia; I talked to the people who are running the operation there; I talked to the head of the U.N. delegation there, Mr. Akashi.

I think I have a feel for the situation that is there. Mr. President, I think we must learn from our experiences. The United Nations has a very valid role to play when there is a peace to keep. But, Mr. President, we have the best of intentions in the United Nations, but we have the worst of results. In fact, the United Nations is becoming an obstacle to solving this situation—not that they mean to be. They are trying. We give them the fact that they are trying.

But, Mr. President, they cannot function. And because they are there, we have the effect of one side being unarmed, basically, and the other side being aggressive with arms. We had the Prime Minister of Bosnia here, and he said,

> I keep hearing people say there are two sides here. Yes, one side is shooting, the other side is dying.

Mr. President, he is right. We cannot sit by and let it happen by saying that we have U.N. peacekeepers sitting there on the ground and, therefore, one side should remain unarmed. They are being ravaged, Mr. President, and we must do something about it. We cannot continue to talk on the floor of the U.S. Senate while they are being ravaged across the ocean.

So, Mr. President, I hope that our leader, Senator DOLE, will bring up his resolution at the earliest possible moment to tell the President how strongly we feel that we should not get involved with this mission beyond what the President has said he will do to help extricate the U.N. peacekeepers under the auspices of NATO.

Mr. President, we have to define that mission very carefully. That mission must be extraction. I do not like all the talk of, well, extraction also means containment of troops, it also means emergencies anywhere that they might occur in Bosnia. And now we are talking about sending helicopters there—American helicopters. Will they have American troops running the helicopters, flying those helicopters?

Mr. President, there are a lot of questions, and I do not think we can afford to just say all of those things are acceptable for our American troops. I do not want American troops flying helicopters into Bosnia. I do not want American troops to be put forth for any emergency in Bosnia. That is ground combat. We are talking about potential ground combat.

Mr. President, I am representing American troops and I am going to do everything I can to make sure that they are as safe as they can be, and that they are not involved in a mission which does not have the United States' security interest.

Mr. President, that is the question here. We have gotten ourselves involved in Somalia through mission creep. We just let it evolve, and we lost Rangers—our own U.S. Army Rangers. Mr. President, we are looking at a potential for mission creep here if we are not very careful.

So I am going to appeal to the President of the United States to watch for mission creep. Helicopters with American troops is mission creep. Contraction of our forces, our U.S. peacekeepers, is mission creep. Emergencies anywhere in Bosnia is mission creep.

Mr. President, I hope that Senator DOLE brings his resolution to the floor so that the President of the United States can hear: The time has come to lift the arms embargo and let these people have a fair fight.

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, the Senator from South Dakota, [Mr. PRESSLER], is recognized to speak for up to 10 minutes.

AIRLINE SAFETY STANDARDS

Mr. PRESSLER. Mr. President, yesterday morning at 6 a.m. I had the pleasure of riding on the first flight between Rapid City and Sioux Falls that provides new air service in our State.

As a member of the Commerce, Science, and Transportation Committee, I have long been a champion of air service in our smaller cities, the safety of smaller aircraft, and the provision of air services to citizens living in non-hub airport areas.

I have also been very concerned about air fares for travel to and from our Nation's smaller cities. For example, can someone living in Humboldt, SD, get a supersaver ticket if they have to fly first into a hub airport? So often the best deal, so to speak, on airline tickets, go to those people who live in bigger cities with hub airports such as New York, Minneapolis, Denver, Los Angeles, et cetera. Frequently, we find that flying into that hub airport from the smaller city is the expensive part of the trip. Citizens living in nonhub cities should not be overlooked.

Mr. President, our air transportation system is based on the hub and spoke system. Even in New York, a State with substantial air service, citizens living in upstate New York must fly on a small carrier into a hub to be connected to their next destination. The same is true in Fresno, CA, where my sister lives. This also is the case in my home State of South Dakota.

The question is, Do the smaller planes ensure the same level of travel safety? On the Commerce, Science, and Transportation Committee, I have been a champion of small aircraft safety. We will continue working to promote safe air travel on all sizes of aircraft.

I certainly do not advocate Government regulation, but I am constantly jawboning the big airlines where there is a coded relationship with the smaller airline to treat the smaller airlines fairly. After all, the smaller carriers are the lifeline of many smaller communities and provide the larger carriers with many of their passengers.

Yesterday, as I mentioned, I took part in the inaugural flight providing air service between South Dakota's two larger cities, Rapid City and Sioux Falls. I am glad to say that Great Lakes Aviation, which code-shares with United Airlines, initiated that service. It will help our State a great deal.

I shall continue to be a champion of airlines in smaller cities, working to ensure we have good air service into the hubs so that citizens living in smaller communities remain linked to the Nation's air transportation system. From air safety to reasonable air fares to air service availability, our nonhub cities deserve equal attention from the airline industry.

Mr. President, I would also like to briefly discuss the important issue of international aviation. I, along with a number of my colleagues, am working on a resolution intended to aid our air carriers serving Japan.

Currently, Japan is violating the United States-Japan bilateral aviation agreement by denying our passenger and cargo carriers the right to serve cities throughout the Pacific rim from Japan. Cargo and passenger traffic beyond Japan into Malaysia and China and so forth is very lucrative. The Japanese are attempting to prevent our carriers from serving this traffic since they want to protect these markets for their own carriers which are very inefficient.

Federal Express has a new Pacific rim cargo hub they are ready to open at Subic Bay in the Philippines. They cannot open it. The Japanese will not permit Federal Express to serve routes from Japan which are necessary to make this hub operational. The Japanese are violating the bilateral aviation treaty and this is costing the shareholders of Federal Express tens of millions of dollar. Each day that passes causes these substantial damages to increase.

We must not tolerate this flagrant violation of an international agreement. The world is watching and we should not set a dangerous precedent for international aviation relations.

Our air carriers also have a problem obtaining sufficient access to both Heathrow and Gatwick airports in the United Kingdom. Access to Heathrow is of particular concern since Heathrow is the most important international gateway airport serving points throughout the world. We must continue to work to open these markets for our carriers.

The only reason that the Japanese or the British have more traffic on particular routes where they ''compete'' with United States carriers is due to restrictions which distort the market and protect foreign carriers from true head-to-head competition with our more efficient carriers. For example, they use restrictive bilateral agreements, impose so-called ''doing business'' problems on our carriers such as putting them in terminals that are intolerable to passengers, and, in the case of the Japanese, they outright refuse to respect the clear terms of our aviation agreement.

I have been working on international aviation issues because international opportunities are critical to the long-term profitability of our carriers. Also, consumers benefit greatly by increased competition in international markets.

There is an important relationship between the issues of service to small communities and international aviation policy. I tie the two issues together because increased international opportunities will strengthen the economic health of our airline industry. In turn, this financial strength should translate into better service to all domestic markets, particularly smaller nonhub markets.

By working to strengthen our carriers abroad, it is my hope I am improving service for consumers in underserved markets. Therefore, I am urging our major airlines to give fair treatment here at home to people who live in smaller cities and rural areas. The administration, the Congress, and the airline industry should all work together to accomplish these domestic and international aviation goals.

For example, I just came from the Senate Finance Committee, on which I serve, where we were considering fuel taxes on various modes of transportation. One issue that was discussed which is of particular concern to me is the aviation fuel tax that is scheduled to go into effect later this year.

I am concerned the jet fuel tax will make the problem of air service in small communities much worse. I am also concerned this tax will adversely affect the competitiveness of our carriers in international markets.

Mr. President, we must never lose sight of the many difficult challenges facing our air carriers. Importantly, we must never forget that it is consumers and communities who have the largest stake of all.

TRIBUTE TO JIM HARDER

Mr. PRESSLER. Mr. President, today I pay tribute to a dedicated, brave South Dakotan who has made us all proud. Maj. Jim Harder, a native of South Dakota, is an Air Force pilot and a member of the Air Force Thunderbirds—a select group of accomplished aviators who entertain audiences with their aerial performances.

Jim is yet another living symbol of the hard working South Dakotan. He graduated from Huron High School and South Dakota State University. After college, Jim decided to use his talents in the service of his country by joining the Air Force. He first sought to become a navigator on an EC–135, but he

so excelled in his duties that he was assigned to flying an F–16C, the most advanced fighter/bomber in the Air Force. As a member of the elite Thunderbirds, Jim performs a variety of roles: pilot, operations officer, show evaluator, and safety observer.

For years, I as well as other Americans have enjoyed and marveled at the Thunderbirds. These exceptional aviators do more than just entertain a crowd. They serve to demonstrate individual talents, and collective skills that are second to none. It is no wonder that our Air Force pilots are considered the world's best. I am delighted that Jim is a part of this legacy of excellence.

Every summer, Ellsworth Air Force Base holds an annual air show which attracts thousands of spectators. Many South Dakotans come to enjoy an assortment of exhibits and historical information.

In addition, the base displays a fantastic array of aircraft on the ground and in the air. At this year's show held on July 9, the Thunderbirds were the featured attraction. So it was a homecoming for Jim Harder, a homecoming that he was able to share with his father, Elwood. I am sure no South Dakotan was more proud of Jim Harder and his fellow Thunderbirds than Elwood Harder.

Mr. President, I take great pride in sharing with my colleagues, the visitors in the gallery, and C–SPAN viewers at home the extraordinary achievements of my fellow South Dakotans.

Jim Harder is yet another standout South Dakotan who has excelled in his field. His versatile role in the Air Force Thunderbirds is a job that requires dedication and diligent persistence. Most important, Jim's skills and expertise elevates the level of performance of his fellow fliers.

Teamwork and individual dedication are why the Thunderbirds are respected throughout the world. And individuals like Jim Harder—a man who chose to devote his talents to the service of his country—are the reasons why our Nation's defense remains strong. Again, on behalf of all South Dakotans, I commend Jim Harder for his extraordinary accomplishments. I wish him continued success with the Air Force Thunderbirds.

IN HONOR OF RUSS HANSEN

Mr. PRESSLER. Mr. President, we all know that life on a farm is not always easy. Few people know that farming is one of this country's most hazardous industries. Unforeseen accidents often occur, and try as we might to avoid them, they seem to strike when we least expect it.

In 1993, one tragic incident took place on a farm in my home State. Russ Hansen, a 39-year-old farmer from Spink County, was killed in a farming accident, leaving behind his wife, Mary, and three children, Joshua, Jeff, and Jill.

Words cannot fully console the mind when tragedies such as these happen. We try to pay homage to those who have passed away, but nothing will ever replace loved ones we have lost. Tributes remind us of the person we once knew so well—and in their own special way help ease the pain.

It was made known recently that the Hansen family will have a living memorial in honor of their father and husband. Russ was a true steward of the land—a farmer who through his knowledge of the earth sought to make the most of it and for it. Before he died, Russ donated some of his farmland to South Dakota State University [SDSU]. The school used the land to test varieties of wheat. Because of Russ' love of the land and devotion to the SDSU research, the school announced this spring that the tests on his land have yielded a new hard red spring wheat. It is a wheat that is proving to be resistant to disease, pests, and shattering. And in a fitting tribute, the wheat will be called ''Russ.'' It is expected to be on the general market by 1997.

Mr. President, no single person in this country has consistently been the source of more innovation than the American farmer. The ritual of farming is not just planting, growing, and harvesting. It is a quest to innovate and challenge the land to produce something it has never produced before. Russ Hansen was that kind of American farmer. I am sure Mary, Joshua, Jeff, and Jill Hansen are proud that Russ' legacy will live on in the hearty new brand of wheat that will bear his name. I am proud of Russ' lifetime of devotion to the land, and the innovators at South Dakota State University who worked with Russ to achieve this new high-quality wheat. It is a great achievement for SDSU and an ever-lasting tribute to Russ Hansen.

I ask unanimous consent to have a related article printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NEW WHEAT NAMED AFTER FARMER

(By Jennifer DeAnn Olson)

FRANKFORT.—Memorials come in unexpected ways.

Mary Hansen received a phone call this spring saying that scientists at South Dakota State University in Brookings had developed a new variety of hard red spring wheat. They had named the variety Russ after Hansen's husband, a 39-year-old Spink County farmer and feedlot operator who died in a 1993 farm accident.

''Finding out about it, we were totally surprised,'' Hansen said from her Frankfort farm. ''We were very proud and pleased.''

Russ Hansen had worked closely with the people from SDSU during his years of farming, donating land to be used as test plots.

''You had to know Russ. He could talk to anybody,'' Hansen said, ''I think it was more than a working relationship (with SDSU), it was a friendship.''

This friendship was obviously worth remembering. It yielded a high-yield wheat, resistant to disease, pests and shattering, once known as SD8073, now named Russ. The variety, now being tested by certified seed growers, should be ready for the general market by 1997.

Mary Hansen still lives on the farm. She has sold the cattle and rented out her property. And the wheat variety has been especially important to the Hansen's three children—Joshua, 13; Jeff, 12; and Jill, 9.

''It really says a lot about Russ,'' Hansen said.

''Russ has been gone almost two years now, but he'll always be around,'' she added.

THE 1995 SIOUX FALLS CANARIES

Mr. PRESSLER. Mr. President, when I was growing up in Humboldt, SD, professional baseball flourished throughout my State. I remember many games from the now-defunct Basin League. Those contests of skill and team play stirred within me a love and appreciation for America's favorite pastime.

During the recent Fourth of July holiday, I was given the honor of throwing out the first pitch for the Sioux Falls Canaries in its game against the Timber Bay Whiskey Jacks. Despite many wonderful plays and an enthusiastic crowd, the Canaries lost. Nevertheless, the evening was entertaining and exciting. It was baseball the way it should be played. The players demonstrated superb individual skills, team dedication, and enjoyment of the game itself.

Mr. President, South Dakota professional baseball has a long and colorful history as old as the State itself. It was in Sioux Falls in 1889, the year South Dakota was granted statehood, when a pro baseball team wearing bright yellow uniforms was formed in the city. The team was named the ''Yellow Kids,'' after a comic strip that appeared in the Sioux Falls Press. Upon viewing the team, Guy LaFollette, a local sportswriter for the Press, suggested the nickname ''Canaries.'' LaFollette continued to refer to the team as the Canaries in his sports articles. The label stuck. Eventually, the Canaries became the official name of the team.

Despite having a reputation of hiring away the best players from the other teams, the original Sioux Falls Canaries lasted until 1903, when their class D league, the Iowa and South Dakota League, folded.

Sioux Falls would be without a pro team until 1920 when the Sioux Falls Soos [Sues] began play in the South Dakota League. The team's manager, Fred Carisch, was a veteran of the 1902 Canaries team. In 1924, the Sioux Falls team changed its name back to the Canaries because the Sioux City Cardinals joined the Canaries as part of a new, expanded, Tri-State League. Apparently, the thought was the two birds—the Canaries and the Cardinals—sounded better when they played. Unfortunately, the league and the teams were disbanded after only one season.

Professional baseball returned again to Sioux Falls in 1930, when Rex Stucker organized a new version of the Canaries, which played in an independent circuit for three seasons. The team

joined the Nebraska State League in 1933, which was renamed the ''Western League'' in 1938, when teams from Colorado, Wyoming, Minnesota, and Iowa joined.

In 1942, Rex Stucker upgraded the Sioux Falls Canaries from the Class C Western League to the Class D Northern League. However, World War II stopped league play after the 1942 season, and it would not resume until 1946. At that point, the Canaries was an independent team not affiliated with a major league baseball franchise. That would change in 1947, when Stucker sold the Canaries to Mory Levinger, owner of the Happy Hour bar in Sioux Falls. Soon afterward, Levinger struck an agreement with the Chicago Cubs to make the Canaries one of its farm teams. However, in 1953, Levinger sold the team to Winnipeg and Sioux Falls again was without professional baseball.

In 1966, Sioux Falls became the home of a new team, which moved from the semiprofessional Basin League to the Northern League. This team was known as the Packers, however, not the Canaries, and was owned by a group of Sioux Falls businessmen. This team was a farm club for the Cincinnati Reds. In fact, several Packers would become standouts in the big leagues, most notably Ken Griffey, Sr. The Packers stayed in the Northern League until the league folded after the 1971 season. Sioux Falls would be without a pro baseball team for more than 20 years.

In the early 1990's, Miles Wolff spent 2 years traveling the Upper Midwest meeting with interested baseball people and examining existing facilities. By this time, the Upper Midwest had been the only area of the Nation without minor league baseball. Mr. Wolff rightly saw it as an area ripe for minor league baseball expansion.

In June 1993, the fourth version of the Northern League began with six organizations, including one in Sioux Falls. The organization was honored to bring back the name of the first Sioux Falls pro team, the Canaries.

Mr. President, I am proud the Sioux Falls community has given such great support to the Canaries. In the inaugural 1993 season, the Canaries drew 86,187 in attendance. Last year, attendance grew to just shy of 100,000. This season promises to be no less of a banner year for Sioux Falls Canaries' fan support. Currently, each home game is averaging 2,704 fans in attendance. This high level of fan support is prevalent throughout the entire Northern League. All six of the Northern League teams are ranked nationally in the top 11 for average attendance per game for independent baseball leagues.

As with any quality sports team, the key to success begins with an effective management team and great support staff. In my opinion, the Canaries has one of the best organizations of any independent league team. I salute team president Harry Stavernos and vice presidents Mark Wilson, Buzz Hardy, and Rick Tracy for their leadership in guiding the Canaries to success. Field leadership of the team is in the capable hands of manager Dick Dietz, hitting instructor Frank Verdi, coach Hiro Shirahata and player-coach Mike Burton.

The Sioux Falls Canaries' commitment to winning is not only exemplified by its management but also by the hard work and dedication of the players. The Canaries have amassed a won-loss record of 98–88 over its three seasons. The team holds the Northern League record for most consecutive wins, nine in a row. The high quality of the players is evidenced by the 11 former Canaries now playing for major league affiliates.

Mr. President, I ask unanimous consent to have printed in the RECORD the team roster of the 1995 Sioux Falls Canaries at the conclusion of my remarks. Presently, the Canaries are only three games out of first. I have every reason to expect the team will finish on top by the end of the season.

Mr. President, Sioux Falls baseball has had a great tradition of exceptional all-around play. I want to congratulate the Sioux Falls Canaries organization on more than living up to this high standard on the field and giving the Sioux Falls community something to cheer about. I wish the team the very best of success in the future.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

1995 SIOUX FALLS CANARIES

No.	Name	Position	Hometown
50	Dick Dietz	Manager	Pawley's Island, SC
38	Hiro Shirahata	Coach	Tokyo, Japan
26	Frank Verdi	Pitching coach	Port Richey, FL
24	Mike Burton	First base	Port Charlotte, FL
36	Aaron Cannaday	Catcher	Monroeville, NJ
14	Benny Castillo	Centerfield	Cooper City, FL
8	Beau Champoux	Shortshop	San Diego, CA
21	Tony Coscia	Pitcher	San Jose, CA
25	Rob Croxall	Pitcher	El Segundo, CA
34	Adell Davenport	Leftfield	Greenville, MS
6	Matt Davis	Second base	Chico, CA
29	Nic Frank	Outfield	Camarillo, CA
40	Kevin Garner	First Base/DH	Austin, TX
28	Joel Gilmore	Pitcher	Conroe, TX
22	Rod Huffman	Pitcher	Tyler, TX
33	Eduardo Lantigua	Rightfield	Moca, DR
18	Glenn Meyers	Pitcher	Wilder, KY
31	Jason Mickel	Pitcher	Portland, OR
27	Bobby Post	Pitcher	Reno, NV
23	Jon Saylor	Pitcher	Dallas, TX
9	Mike Tarter	Catcher	Marietta, GA
7	Frank Valdez	Third base	Miami, FL
20	Max Valencia	Pitcher	San Francisco, CA
19	Andy Wise	Pitcher	Fountain Valley, CA

NAVY SECRETARY JOHN H. DALTON'S SPEECH AT CHANGE OF COMMAND OF COMMANDANT OF THE MARINE CORPS

Mr. HEFLIN. Mr. President, I attended the change of command of the Commandant of the U.S. Marine Corps where Gen. Charles Krulak relieved Gen. Carl Mundy and became the 31st Commandant of the Marine Corps.

The Honorable John H. Dalton, Secretary of the Navy, made a truly outstanding speech. Therefore, I would like to share the contents of this speech with my colleagues, so I ask unanimous consent that a copy of his speech entitled, ''The Marine Corps' Change of Command'' be printed in the CONGRESSIONAL RECORD following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE MARINE CORPS' CHANGE OF COMMAND

(BY HON. JOHN DALTON)

Secretary White, distinguished members of Congress, General Shalikashvili and the members of the Joint Chiefs of Staff, Marines, ladies and gentleman.

I am proud to serve as the Secretary of the United States Marine Corps. And, I am deeply honored to participate in the change of command of an institution that sets the standard for military leadership around the world.

Today is an important day in the lives of these two great men, General Carl Mundy and General Chuck Krulak. But, they would be the first to tell you that today belongs not to them, but to the Corps.

Their selfless attitude is seen clearly in Carl Mundy's insistence that he not be recognized with any personal decorations at this ceremony.

However, I think you all should know that on behalf of the Department, I have awarded the Navy Distinguished Service Medal to General Mundy. Similarly the Secretary of Defense and each one of our sister services have awarded him their Distinguished Service Medal.

General Mundy, you have served with honor, courage and commitment in a manner befitting the Commandant of the Corps. Our allies thank you, America thanks you and above all your Marines thank you for a lifetime dedicated to the defense of freedom.

Carl's many accomplishments and honors would not have been possible without the love and support of his family, especially his devoted wife, Linda. For nearly four decades Linda has served as a Marine wife and mother. During the past four years she has endeared herself to everyone she has touched and has established a special place in history for herself as the First Lady of the Marine Corps. It was an honor for me to recognize her achievements with the Department of the Navy's Distinguished Public Service Award.

The past four years have been challenging ones for the Navy and Marine Corps team. Amidst the drawdown in force structure, shrinking defense budgets and expanding global commitments, General Mundy has led the Corps to new levels of excellence, efficiency and effectiveness. By encouraging closer integration with the Navy, you have created a Marine Corps with enhanced capabilities that is prepared for every eventuality.

It is this spirit of closer integration between the Navy and Marine Corps that will be a legacy of Carl Mundy to our Naval Service. Such integration and interoperability ensure that the Navy and Marine Corps team will be prepared for the challenges and battlefields of the next millennium.

General Mundy's inspiring leadership, bold courage, and extraordinary vision have perpetuated a dynamic and innovative Corps and have put in place the mechanism to ensure that the Corps will continue to flourish.

Today is another step in the continuing evolution of the Corps—one of America's true national treasures. Today we witness the change of command, the passing of responsibility and acceptance of accountability for the United States Marine Corps.

General Krulak, you now take up the standard for the most elite fighting force in

the world. May you command our Corps with strength, vision and the same commitment to core values that marked the leadership of the Commandants who precede you. The Corps will be blessed with the unfailing support of your delightful wife Zandi. On Tuesday of this week the 31st Commandant and his lady celebrated their 31st wedding anniversary.

Today is important not only for Marines, but also for every American, and especially those who have worn a military uniform. It is a special day for us to remember the Corps' heroic past and to celebrate its bright future.

The fundamental military values of honor, courage and commitment are as much a part of the Marine Corps today as they were at its birth in 1775. Marines today understand that these values represent an ideal . . . an ideal worth fighting for.

Fighting for ideals is what the Corps is all about. And, the strength of today's Corps rests on a foundation of extraordinary heroism rising up from the bedrock of America's military history.

It is on that foundation of past heroism that the future of the Corps will be built. It will be a future filled with innovation, flexibility, resourcefulness and above all spirit. It is a spirit which comes from being the best. Marines know that when American interests are threatened or our friends need help . . . America calls the Corps.

Throughout the past four years, Marines have been called very often and, as throughout their history, they have responded with the utmost professionalism. Whether it was Haiti, Somalia, Bosnia or the Arabian Gulf, the Marines were always ready to get the job done . . . and to get it done right.

Whether as warfighters, peacekeepers, or rescuers; the Marines have proven time and time again that America can count on the Corps when there is a threat to our national security.

The Marine Corps of today is just the adaptable, flexible, and resourceful force America needs. In this unsettled and often confusing post Cold War world, the military mission is no longer as clearly defined. For this reason our military forces must adapt in order to succeed.

Adapting is what Marines do best. The Marines have been fighting America's wars for two centuries and continue to be the force of choice for either keeping the peace; or storming the beach.

In the past, Marines have done more beach storming than peacekeeping, but in the future it is clear that both missions will need to be performed. In my mind there is no force in the world more capable of handling the complicated military missions of the future than the United States Marine Corps.

The Corps has had many great Commandants, but none who has led through such a tumultuous period of internal change. Today the Corps has never been better trained, better led, or more ready. Only in this state would Carl Mundy even consider relinquishing command of the Corps.

That is your legacy, ''a RELEVANT, READY and CAPABLE Corps of Marines'' who embody the traditions of the past and who are ready to meet the challenges of the future. RELEVANT to meet the defense needs of the Nation tomorrow; READY to respond instantly as America's 911 Force to prevent and contain crises or fight today; and CAPABLE of meeting the requirements of our National Military Strategy.

Carl, your days in uniform may soon be over, but your service to the Corps will remain timeless. Your total devotion to the Corps has nurtured America's undying love for Marines. Your determination efforts have ensured that Marines will always be the first to fight in America's defense.

Yesterday afternoon, in the oval office, our Commander in Chief promoted Chuck Krulak to General. In that ceremony President Clinton pointed to Carl Mundy and said emphatically, ''Of all the General Officers I have worked with, you were the one I knew was always telling me exactly what you believed. I want you to know how much I appreciate that.'' The President of the United States could not have offered higher praise.

For fifty years Iwo Jima has been a special place for the Marine Corps, and it was there atop Mount Suribachi that I had the privilege to announce the President's nomination for our 31st Commandant.

So as we consider the significance of this ceremony, a change of command of the Corps that these two Marines have devoted their lives to, I think it appropriate to recall the words of Chaplain Roland Gittelsohn when he dedicated the Fifth Marine Division Cemetery on Iwo Jima fifty years ago. This February, Rabbi Gittelsohn recalled his words at the ceremony commemorating that battle at the Iwo Jima War Memorial beside Arlington National Cemetery. He said:

''Here lie officers and men of all colors, rich men and poor men together. Here are Protestants, Catholics and Jews together. Here no man prefers another because of his faith or despises him because of his color. Here there are no quotas of how many from each group are admitted or allowed. Among these men there is no discrimination. No prejudice. No hatred. Theirs is the highest and purest democracy.

''Any man among us, the living, who failed to understand that, will thereby betray those who lie here . . . whoever lifts his hand in hate against a brother, or thinks himself superior to those who happen to be in a minority, makes of . . . their sacrifice an empty, hollow mockery.

''Thus do we consecrate ourselves, the living, to carry on the struggle they began. Too much blood has gone into this soil for us to let it lie barren.''

Those words spoken in honor of fallen Marines and Sailors hold a living truth. The truth is that we, the living, must carry on their struggle for liberty and freedom everyday, and in everything we do.

God bless you, and God bless the United States Marine Corps. Semper Fidelis.

H.R. 956 (PRODUCTS LIABILITY BILL) AND PRICE-ANDERSON ACT

Mr. HEFLIN. Mr. President, during the course of debate on the products liability bill, I mentioned nuclear power plants and the possible effect that the proposed legislation might have on two issues dealing with a nuclear power plant problem—one being the issue of pain and suffering and the other being the statute of repose.

Then on May 9, 1995, I spoke on this issue in the U.S. Senate. I concluded my remarks by saying that I wanted to do further research pertaining to these issues.

I asked the Congressional Research Service of the Library of Congress to look into this and they have prepared a memorandum. I ask unanimous consent that the attached memorandum from the Congressional Research Service be printed in the CONGRESSIONAL RECORD following my remarks.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, May 23, 1995.

To: Sen. Howell Heflin; Attention: Jim Whiddon.

From: American Law Division.

Subject: Causes of Action under the Price-Anderson Act.

This is in response to your request for a memorandum addressing whether state causes of action based on public liability exist under the Price-Anderson Act.[1] In particular, your inquiry asks that we address survival of state tort action, statutes of limitation and repose, and the impact of the recently passed products liability legislation (the House-passed and Senate-passed versions of H.R. 956, 104th Congress).

In Parts I and II, we analyze the Act's language, legislative history and relevant case law, concluding that the 1988 Amendments Act created a federal cause of action. Whereas state causes of action based upon public liability existed under Price-Anderson prior to the 1988 amendments, such is no longer the case. The only state tort actions that may continue to survive are those completely outside the Price-Anderson public liability scheme. Under the 1988 Amendments Act, federal courts, which have original jurisdiction over public liability actions arising out of nuclear incidents, are directed to apply state law substantive rules. With the exception of waiver of defenses provisions regarding extraordinary nuclear occurrences, the Price-Anderson Act, as amended, lacks a specific statute of limitations for public liability actions arising out of nuclear incidents. As such, courts will apply the statute of limitations in effect in the state in which the nuclear incident occurred. In Part III, we analyze the possible impact of the statutes of limitation and repose as contained in the recently passed products liability legislation in light of the Price-Anderson scheme.

I. BACKGROUND

In 1957, the Price-Anderson Act was enacted as an amendment to the Atomic Energy Act in order to remove the deterrent of potentially catastrophic liability to those in the private sector who were interested in participating in the nuclear power industry but reluctant to risk significant financial resources and liability.[2] In 1966, the Act was extended for another ten year period and a key provision—a waiver of defenses provision[3]—was added. Under this provision, the defendant in any action involving public liability[4] arising from an ''extraordinary nuclear occurrence''[5] can be required to waive certain legal defenses (e.g., defenses based on conduct, immunity, and state statutes of limitation).[6] It is clear that the Act, as originally enacted and as amended in 1966, was intended to have minimal inference with State law.[7] Also in 1966, the Act was amended to include a provision authorizing the consolidation in one U.S. District Court of all law suits arising from an ''ENO''—conferring original jurisdiction upon the Federal courts in such cases.[8] The Act was amended again in 1975.

A long line of cases under the Act as amended through 1975 had held that federal courts did not have subject matter jurisdiction for claims arising out of non–ENO nuclear incidents and that state tort remedies were *not* preempted by the Act.[9]

II. 1988 AMENDMENTS

Under the Price-Anderson Amendments Act of 1988, original federal jurisdiction was significantly broadened to cover not only those actions arising from ENOs but those

[1] Footnotes at the end of the article.

arising from any ''nuclear incident.'' [10] A definition of the term ''public liability action'' [11] was added with provision made for the substantive rules for decision to be derived from State law.[12] As the Act now reads, the applicable section—§170(n)(2) [13]—states:

''With respect to any *public liability action* arising out of or resulting from a *nuclear incident*, the United States district court in the district where the nuclear incident takes place . . . shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. . . . [emphasis added].''

Section 170(n)(2) continues with provision that public liability actions pending in state court shall be removed or transferred to the appropriate federal district court ''upon motion of the defendant or of the Commission [NRC] or the Secretary [of HHS].''

The legislative history makes it clear that these changes were intended to confer original jurisdiction in the federal district courts and that Congress chose this option rather than designing a new body of substantive law to govern such cases.[14]

CASE LAW UNDER THE 1988 AMENDMENTS

A recent Third Circuit Court of Appeals decision, *In Re TMI Litigation Case Consol. II* [15] stated:

''Under the terms of the Amendments Act, the ''public liability action'' encompass ''any legal liability'' of any ''person who may be liable'' on account of a nuclear incident. . . . Given the breadth of this definition, the consequence of a determination that a particular plaintiff has failed to state a public liability claim potentially compensable under the Price Anderson Act is that he has no such claim at all. After the Amendments Act, no state cause of action based upon public liability exists. A claim growing out of any nuclear incident is compensable under the terms of the Amendments Act or it is not compensable at all. Any conceivable state tort action which might remain available to a plaintiff following the determination that his claim could not qualify as a public liability action, could not be one based on ''any legal liability'' or ''any person who may be liable on account of a nuclear incident.'' It would be some other species of tort altogether, and the fact that the state courts might recognize such a tort has no relevance to the Price-Anderson scheme. At the threshold of any action asserting liability growing out of a nuclear incident, then, there is a federal definitional matter to be resolved: Is this a public liability action? If the answer to that question is ''yes,'' the provisions of the Price-Anderson Act apply; there can be no action for injuries caused by the release of radiation from federally licensed nuclear power plants separate and apart from the federal public liability action created by the Amendments Act.[16]''

The court went on to state:

''The Amendments Act creates a federal cause of action which did not exist prior to the Act, establishes federal jurisdiction for that cause of action, and channels all legal liability to the federal courts through that cause of action. . . . Thus, Congress clearly intended to supplant all possible state causes of action when the factual prerequisite of the statute are met.[17]''

Another recent Court of Appeals decision, *O'Conner* v. *Commonwealth Edison Co.*,[18] held that the Amendments Act embodies substantive federal policies and, rather than merely create federal jurisdiction for a state claim, created a new federal cause of action that supplanted the prior state cause of action.[19] With regard to the interpretation of the phrase ''law of the State'' as it appears in the definition of ''public liability action.'' [20] a recent case of first impression reasoned that the phrase was intended to be broadly defined—to include the whole law of the state (state substantive law and choice of law provisions).[21] Another recent federal court decision noted that because Price-Anderson provides no statute of limitations, the limitations period must be borrowed from State law.[22]

FEDERAL CAUSE OF ACTION BASED ON STATE SUBSTANTIVE LAW

The Price-Anderson Act, as originally drafted, did not create a federal cause of action. However, it is clear that the Amendments Act of 1988—although relying up on state law elements—does. The 1988 Amendments Act broadened the scope of the Price-Anderson Act and provides for retroactive subject matter jurisdiction in the federal courts over claims involving nuclear incidents and Specifically, federal courts have original jurisdiction over any ''public liability action'' arising out of a ''nuclear incident.'' [23]

The new definition of ''public liability action'' created a federal cause of action (while directing the federal courts to apply state law) by stipulating that any such suit be deemed to be an action arising under the Price-Anderson Act—meeting Constitutional requirements. [24] In the Amendment Act, Congress created a federal tort which has its origins in state law. The basis of the action no longer stems from state law but now arises from federal law.[25] State law rules shall apply unless inconsistent.[26]

If the public liability action results from an ENO, the federal statute of limitations provided in §170(n)(1) may apply. If the indemnity agreement required under the Act incorporated a waiver of defenses based on a statute of limitations, state statutes of limitations that are more restrictive than that prescribed in §170(n)(1) (3-years-from discovery) will be superseded while those that are less restrictive (e.g., longer than the prescribed period) will remain in effect. The Act contains no other federal statute of limitations [27] other than that provided in the case of waiver of defenses with respect to ENOs. Therefore, to the extent that a state provides for a specific statute of limitations (not otherwise inconsistent with §170 of the Act), the federal court (or state court if such action is not removed or transferred) appears to be required to apply such state law provision.[28]

III. EFFECTS OF PRODUCTS LIABILITY BILL [29]

Products liability suits are subject in every state to a statute of limitations, which is a period of time after an injury or illness occurs, or after its symptoms or their cause is discovered, within which an action must be brought. A minority of states have also enacted a statute of repose, which bars products liability suits where the injury-causing products exceeds a specified age. The House-passed version of H.R. 956 contains no statute of limitations, whereas the Senate-passed version contains a two-year statute of limitations. Both bills contain statutes of repose, but they are significantly different.

STATUTE OF LIMITATIONS

Because the House-passed version of H.R. 956 contains no statute of limitations, it would not affect the Price-Anderson Act, which, as noted, also has none and therefore applies the applicable state statute of limitations. Section 109(a) of the Senate-passed version of H.R. 956 has a two-year statute of limitations, but section 102(c)(2) of the bill provides that nothing in it ''may be construed to . . . supersede or alter any Federal Law.'' However, section 102(b)(1) provides that the bill supersedes state law ''to the extent that State law applies to an issue covered under [the bill].''

As noted, the Price-Anderson Act, as amended in 1988, creates a federal cause of action and does not permit state causes of action within its public liability scheme. Because the Senate-passed version of H.R. 956 would not supersede or alter any federal law, it appears that it would not alter the Price-Anderson's Act scheme of using state statutes of limitations. One could argue that, because the Price-Anderson Act uses state statutes of limitations, and the Senate-passed bill supersedes state law, the Price-Anderson Act therefore would use the Senate-passed bill's statute of limitations. Although this interpretation does not seem out of the question, it appears that the better view would be that to use the Senate-passed bill's statute of limitations in Price-Anderson Act cases would be to supersede a federal law, which would be contrary to the bill's expressed intent. Nevertheless, as this seems uncertain, it might be advisable for Congress to make its intention explicit.

STATUTES OF REPOSE

Section 109(b) of the Senate-passed version of H.R. 956 contains a 20-year statute of repose applicable to any product that is a ''durable good.'' The definition of this term, in section 101(6), apparently is confused in its incorporation of the Internal Revenue Code, but essentially includes products used in a trade or business but not consumer goods. Therefore, we will assume that the term would include nuclear power plants and their component parts.

The Senate bill's statute of repose would not apply, even to durable goods, in four situations: (1) cases of toxic harm; (2) where the product is ''[a] motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire''; (3) where the defendant made an express written warranty as to the safety of the product that was longer than 20 years, but, at its expiration, the statute of repose would apply; and (4) small aircraft covered by the 18-year statute of repose prescribed by the General Aviation Revitalization Act of 1995, Public Law 103–298, 49 U.S.C. §40101 note.

Section 106 of the House-passed version of H.R. 956 contains a 15-year statute of repose applicable to all products, including consumer goods, except small aircraft, covered by the 18-year statute of repose prescribed by the General Aviation Revitalization Act of 1995. There are only two other exceptions to the House bill's 15-year statute of repose: (1) if the defendant made an express written warranty as to the safety of the product that was longer than 15 years, the warranty would apply, but, at its expiration, the statute of repose would apply; and (2) the 15-year statute of repose would ''not apply to a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product.''

With respect to the preemption of other laws, the House- and the Senate-passed bills are the same with respect to federal laws but different as to state laws. With respect to federal laws, section 102(c)(2) of the Senate-passed bill provides, as noted above, that nothing in it ''may be construed to . . . supersede or alter any Federal law.'' Similarly, section 402(2) of the House-passed bill provides that nothing in it ''shall be construed to . . . supersede any Federal law.'' (The Senate-passed bill's not using the word ''alter'' would not appear to be of any consequence.)

With respect to state laws, section 101(b) of the House-passed bill, like section 102(b)(1) of the Senate-passed bill, provides that the bill supersedes state law ''to the extent that State law applies to an issue covered under [the bill].'' However, the Senate-passed bill, but not the House-passed bill, contains an

exception applicable to its statute of repose. It provides that, if a state law prescribes a shorter statute of repose, such state law would apply. All state statutes or repose are shorter than 20 years, but fewer than half the states have statutes of repose. Therefore, the effect of the Senate-passed bill would be to impose a 20-year statute of repose on the majority of states without statutes of repose, but to leave the other state's statutes of repose as they are.

How would these provisions affect the Price-Anderson Act? This depends upon whether the Price-Anderson Act incorporates state statutes of repose, as it does state statutes of limitations. We have found no authority on point, but it appears unlikely that it would incorporate state statutes of repose. This is because such statutes can preclude suits from being filed even before an injury occurs, and, as the Price-Anderson Act creates a federal cause of action, it seems unlikely that a court would construe it, in the absence of some expression of congressional intent, to allow a state to preclude use of a federal cause of action. If the Price-Anderson Act does not incorporate state statutes of repose, then neither the House- nor Senate-passed statutes of repose would apply, as both bills state that they would not supersede federal law.

If, however, the Price-Anderson Act does incorporate state statutes of repose, then we may apply the same analysis we did with respect to the Senate-passed bill's statute of limitations. We repeat what we wrote there, substituting ''statute of repose'' for ''statute of limitations,'' and referring to both versions of H.R. 956 instead of only the Senate-passed version: Because neither version of H.R. 956 would supersede any federal law, it appears that neither would alter the Price-Anderson's Act scheme of using state statutes of repose. One could argue that, because the Price-Anderson Act uses state statutes of repose, and both the House- and Senate-passed versions of H.R. 956 would supersede state law, the Price-Anderson Act would use the House- or Senate-passed bill's statute of repose. Although this interpretation does not seem out of the question, it appears that the better view would be that to use either bill's statute of repose in Price-Anderson Act cases would be to supersede a federal law, which would be contrary to either bill's expressed intent.

Suppose, however (continuing to assume that the Price-Anderson Act incorporates state statutes of repose, which appears more likely not to be the case), that the Price-Anderson Act would use the House- or Senate-passed bill's statute of repose. Then the effect of the bills would differ. The House-passed bill's 15-year statute of repose would apply in every case, but the Senate-passed 20-year statute of repose would apply only in those states that do not have a shorter statute of repose. In those states that do have a shorter statute of repose, it would apply.

As noted, however, it seems more likely that state statutes of repose do not apply now and that no statute of repose would apply under either the House- or Senate-passed bills. Again, though, it might be advisable for Congress to make its intentions explicit.

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FOOTNOTES

[1] Act Sept. 2, 1957, Pub. L. 85–256, 71 Stat. 576, as codified at 42 U.S.C. 2210; amending the Atomic Energy Act of 1954 (Act of Aug. 30, 1954, as codified at 42 U.S.C. §§2011 et seq.). The Act was amended in 1966 (Pub. L. 89–645, 80 Stat. 891); 1975 (Pub. L. 94–197, 89 Stat. 1111); 1988 (Pub. L. 100–408, 102 Stat. 1066; hereinafter referred to as the 1988 Amendments Act or the Amendments Act of 1988).

[2] S. Rep. No. 218, 100th Cong., 1st Sess. 2 (1987), reprinted in 1988 U.S.C.C.A.N. 1476–77.

[3] §170n(1); 42 U.S.C. §2210(n)(1). The waiver of defenses provision was seen as a preferable alternative to enactment of a new body of Federal tort law. See S. Rep. No. 1605, 89th Cong., 2d Sess. 10 (1966), reprinted in 1966 U.S.C.C.A.N. 3209.

[4] Section 11 of the Atomic Energy Act, 42 U.S.C. §2014(w) defines the term ''public liability'' as ''any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation . . . except: (i) claims under State or Federal workmen's compensation acts . . . (ii) claims arising out of an act of war; and (iii) whenever used in subsections a., c., and k. of §170 [42 U.S.C. §§2210(a), (c), (k)], claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. . . .''

[5] See §11 Atomic Energy Act, 42 U.S.C. §2014(j) for definition of an extraordinary nuclear occurrence (hereinafter referred to as ENO and generally considered a serious nuclear accident). No nuclear incidents to date have been classified as ENOs.

[6] 42 U.S.C. §2210(n)(1). The Act also provides certain exceptions to the applicability of waivers.

The 1966 Amendments provided that defenses based on statutes of limitations were waived if the suit is instituted within 3 years from when the claimant first knew or reasonably could have known of his injury or damage but in no event more than 10 years after the date of the nuclear incident). Per the legislative history, the stipulated statute of limitations period was not ''a maximum period for assertion of Price-Anderson covered claims, since the waiver authorized by the bill serves only to avoid the application of more restrictive State statutes of limitations. Such waiver leaves undisturbed the laws of those States which have enacted—or in the future may enact—longer periods of limitation.''

See S. Rep. No. 1605, supra n.3 at 21, reprinted at 1966 U.S.C.C.A.N. 3221. The minimum statute of limitations for the filing of claims after an accident supersedes more restrictive State statutes of limitations, but does not affect less restrictive State laws. See S. Rep. No. 70 100th Cong., 2d Sess. 15 (1988), reprinted at 1988 U.S.C.C.A.N. 1427.

In 1975, the Act was again amended; among the amendments was an extension of the statute of limitations from 10 to 20 years. The 1988 Amendments to the Act eliminated the 20 year ''years-from-occurrence'' limitation; the legislative history makes it clear that ''. . . a damage suit could be filed at any time after an ENO, provided the suit is instituted within 3 years from the time that the claimant first know, or reasonable could have known, of his injury or damages caused by the ENO. This new standard would supersede any more restrict State tort law standards in existing law with respect to statutes of limitations.''

See S. Rep. No. 70, id. at 21, reprinted at 1988 U.S.C.C.A.N. 1434. The new standard is considered a Federal standard. Id. at 33, reprinted at 1988 U.S.C.C.A.N. at 1455. See also H. Rep. No. 104, Part 1, 100th Cong., 1st Sess. 17 (1987) referring to the existing (pre-1988) standard as ''more restrictive than the majority of state statutes . . . [and] ineffective to prevent restrictive state statutes from barring legitimate claims.''

As presently stated, the Federal standard is absent any years-from occurrence limitation but includes a 3 year-from-discovery period. When incorporated into an indemnity agreement, ''such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.'' 42 U.S.C. §2210(n)(1).

[7] See S. Rep. No. 1605, supra n. 3 at 6–10 (1966), reprinted at 1966 U.S.C.C.A.N. 3206–3210. Under the Price-Anderson system, the claimant's right to recover from the fund established by the act is left to the tort law of the various States; the only interference with State law is a potential one, in that the limitation of liability features . . . would come into play in the exceedingly remote contingency of a nuclear incident giving rise to damages in excess of the amount of financial responsibility required together with the amount of the governmental indemnity.

Id. at 6.

In Duke Power v. Carolina Env. Study Group, 438 U.S. 59, 65–66 (1978), the High Court referred to the 1966 waiver of defenses provision as based on a congressional concern that state tort law dealing with liability for nuclear incidents was generally unsettled and that some way of insuring a common standard of responsibility for all jurisdictions—strict liability—was needed. A waiver of defenses was thought to be the preferable approach since it entailed less interference with state tort law than would the enactment of a federal statute prescribing strict liability.

[8] §170(n)(2); 42 U.S.C. §2210(n)(2).

[9] See Commonwealth of Pennsylvania v. General Pub. Util. Corp., 710 F.2d 117 (3d Cir. 1983); Stibitz v. GPU, 746 F.2d 993 (3d Cir. 1984); Kiick v. Metropolitan Edison Co, 784 F.2d 490 (3d Cir. 1986); Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984).

[10] §11(a); 42 U.S.C. 2210(n)(2). Section 11 of the Atomic Energy Act, 42 U.S.C. §2014(q), defines a ''nuclear incident'' as: ''. . . any occurrence, including an extraordinary nuclear occurrence, within the United States, causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. . . .''

With regard to the change from consolidating only ENOs in federal court to consolidating claims arising out of any nuclear incident, the legislative history states: ''. . . [T]he bill provides the federal district court in which the nuclear incident occurred with subject matter jurisdiction over claims arising from the nuclear incident. Any suit asserting public liability shall be deemed to be an action arising under the Price-Anderson Act, and the substantive law of decision shall be derived from the law of the State in which the incident occurred, in order to satisfy the Article III requirement that federal courts have jurisdiction over cases arising under the Constitution or under the laws of the United States.''

See S. Rep. No. 218, supra n. 2 at 13, reprinted at 1988 U.S.C.C.A.N. 1488.

On a related matter, see reference in legislative history to the effect of extending the waiver of defenses provision to include radioactive waste activities: The effect of this provision would be to trigger strict liability, and to preempt lesser State tort law standards in any lawsuit involving an accident with radioactive waste that DOE determines to be an ''extraordinary nuclear occurrence.''

S. Rep. No. 70, supra n. 6 at 26, reprinted at 1988 U.S.C.C.A.N. 1439.

[11] Section 11 of the Atomic Energy Act, 42 U.S.C. §2014(hh) defined ''public liability action'' as used in §170 as: ''. . . any suit asserting liability. A public liability action shall be deemed to be an action arising under §170 [42 U.S.C. §2210], and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.''

[12] See H. Rep. No. 104, Part 1, supra n. 6 at 18 (1987), at which the Committee on Interior and Insular Affairs states: ''Rather than designing a new body of substantive law to govern such cases, however, the bill provides that the substantive rules for decision in such actions shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the Price-Anderson Act. The Committee believes that conferring on the Federal courts jurisdiction over claims arising out of all nuclear incidents in this manner is within the constitutional authority of Congress. . . .''

As stated in Re TMI Litigation Cases Consol. II, 940 F.2d 832 (2d Cir. 1991): ''. . . Congress expressed its intention that state law provides the content of and operates as federal law.''

Id. at 855.

[13] 42 U.S.C. §2210(n)(2).

[14] See S. Rep. No. 218 supra note 2 at 13; see also H. Rep. No. 104, Part 1, 100th Cong., supra n. 6 at 18 (1987).

[15] 940 F.2d 832 (3d Cir. 1991), cert. denied, 503 U.S. 906 (1992).

[16] Id. at 854–55.

[17] Id.at 856–57.

[18] 13 F.3d 1090 (7th Cir. 1994), cert. denied, 1994 U.S. Lexis 4722.

[19] Id. at 1096, 1099.

[20] See definition supra, at n. 11.

[21] In Re Hanford Nuclear Reservation Litigation, 780 F. Supp. 1551 (E.D. Wash. 1991), relying on Richards v. United States, 369 U.S. 1 (1962) (interpretation of similar phrase in Federal Tort Claims Act); Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) (interpretation of Outer Continental Shelf Lands Act (OCSLA) provision). See also reference in legislative history to Article III jurisdiction approach that Congress used in the OCSLA; H. Rep. No. 104, Part 1, supra note 6 at 18.

[22] See Day v. NLO, 3 F.3d 153, 154 n. 1 (6th Cir. 1993). See also the trial court decision in Cook v. Rockwell Intl' Corp., 755 F. Supp. 1468, 1482 (D. Colo. 1991) motion denied, 1995 U.S. Dist. Lexis 4986 (D. Colo. 1995) (In response to claim that Price-Anderson was ''silent'' on what limitations should apply, party contended that a state statute establishing a specific

limitation period for ''all actions upon liability created by a federal statute where no period of limitations is provided in said federal statute'' should apply. The court held that such state statutory period did not apply because Price-Anderson provided for a limitations period by mandating the application of state substantive law and that statutes of limitations are substantive).

[23] Although federal courts have original jurisdiction over such actions, states have concurrent jurisdiction. See §2210(n)(2). Subject to removal upon motion, public liability actions may be filed in state courts; in a case in which such action proceeds in state court, §2014(hh) requires that the law of the State in which the nuclear incident occurred determine the rules for decision.

[24] See Article III, §2, cl. 1, U.S. Constitution: ''The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution.. . .''

The issue of whether Congress exceeded its authority under Article III in creasing ''arising under'' jurisdiction even where stipulating that such actions were to be derived from state law has been addressed in a number of opinions issued under the Amendments Act. In vacating and remanding a district court holding that the Amendments Act was unconstitutional, the Circuit Court of Appeals in Re TMI Litigation Cases Consol. II, 940 F.2d 832, 845 (3d Cir. 1991) stated: ''It could not be clearer that Congress intended that there be federal jurisdiction over claims removed pursuant to the Amendments Act; the statutory language is explicit.'' The court, in analyzing subject matter jurisdiction, noted that the Amendments Act ''contains both federal and state elements. While the public liability cause of action itself and certain elements of the recovery scheme are federal, the underlying rules of decision are to be derived from state law.''

Id. at 854.

[25] See In Re TMI Litigation Cases Consol. II, supra n. 15 at 857–58.

[26] Note, for example, that under §170(s); 42 U.S.C. §2210(s) ''No court may award punitive damages in any action with respect to a nuclear incident . . . against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident.. . .''

[27] See, however, §167 of the Atomic Energy Act, 42 U.S.C. §2207, authorizing the Commission to pay ''any claim for money damage of $5,000 or less against the United States for bodily injury, death, or damage . . . where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises.. . .''

[28] If a federally created right of action has a specific statute of limitations, such a right is enforced free from any state limitation period. In such a case, the provision is regarded as one of substantive right setting a limit to the existence of the statutory obligation. Where a federal right has been created without providing a limitation of actions to enforce such a right, since there is no federal statute of limitations of general application, the courts generally apply the forum state's statute of limitations. As such, federal courts will borrow the periods of limitation prescribed by the state where Congress has created a federal right but has not prescribed a period for its enforcement. See 51 am jur 2d limitation of actions §74; 53 C.J.S. limitations of actions §33.

[29] Henry Cohen wrote Part III of the memorandum; Ellen Lazarus wrote Parts I and II.

ATF'S PURCHASE OF 22 OV–10D AIRCRAFT

Mr. GRASSLEY. Mr. President, a news article in this morning's Washington Times says the Bureau of Alcohol, Tobacco and Firearms recently purchased 22 OV–10D aircraft from the Defense Department.

These aircraft were used by the Marine Corps in the Vietnam war for close air support in combat. They were also used in Operation Desert Storm for night observation.

The aircraft are heavily weapons-capable, especially from a law-enforcement perspective. ATF says the planes have been stripped of their weapons. Their purpose, according to ATF, is for surveillance. The planes can locate people on the ground by detecting their body heat.

It's no secret that the ATF is undergoing intense public scrutiny. It has done some real bone-headed things. It has been criticized for enforcing the law while crossing the line of civil rights protections.

ATF's credibility will be even further tested the next 2 weeks when joint committee hearings are held in the other body on the Waco matter. And the Senate Judiciary Committee also will hold hearings on Waco in September.

I raise this issue today, Mr. President, because the purchase of these aircraft in the current climate might continue to feed the public's skepticism, and erode the pubic's confidence in our law enforcement agencies.

For that reason, it is incumbent upon ATF to fully disclose and fully inform the public as to the purchase of these aircraft.

First, what, specifically, will they be used for?

Second, where will they be located?

Third, what assurances are there that the planes will remain unarmed?

The sooner these questions are answered by ATF—openly and candidly—the less chance there is that the public's skepticism will grow.

Mr. President, the continued credibility of the ATF is on the line, in my judgment. At times such as these, when scrutiny is at its highest, the best strategy is to go on the offense. Spare no expense in disclosing fully and swiftly. Because full and swift disclosure is the first step in restoring credibility.

The ATF's credibility is important not just for itself, but for law enforcement in general. There is much work to do to restore the public's trust and confidence. I hope that ATF will step up to the challenge and provide the necessary assurances.

Mr. President, I ask unanimous consent that the Washington Times article, written by Jerry Seper, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, July 18, 1995]

ATF GETS 22 PLANES TO AID SURVEILLANCE

WEAPONS-CAPABLE AIRCRAFT REPAINTED

(By Jerry Seper)

The Bureau of Alcohol, Tobacco and Firearms has obtained 22 counterinsurgency, heavy-weapons-capable military aircraft.

The 300-mph OV–10D planes—one of several designations used by the Marine Corps during the Vietnam War for gunfire and missile support of ground troops, and by the Air Force during Operation Desert Storm for night observation—have been transferred from the Defense Department to ATF.

The turboprop aircraft, which will be used for day and night surveillance support, were designed to locate people on the ground through their body heat.

When used by the military services, the planes were equipped with infrared tracking systems, ground-mapping radar, laser rangefinders, gun sights and 20mm cannons.

ATF spokeswoman Susan McCarron confirmed yesterday that the agency had obtained the aircraft but noted they had been stripped of their armament. She said that nine of the OV–10Ds were operational and that the remaining 13 were being used for spare parts.

''We have nine OV–10Ds that are unarmed; they have no weapons on them,'' Ms. McCarron said. ''They are being used for surveillance and photography purposes. The remainder are being used for spare parts.''

Ms. McCarron said the aircraft were obtained by ATF from the Defense Department ''when DOD was getting rid of them,'' and that other agencies also had received some of the airplanes.

General Service Administration records show that some of the unarmed aircraft also were transferred to the Bureau of Land Management for use in survey work, while others went to the California Forestry Department for use in spotting fires and in directing ground and aerial crews in combating them.

Other models of the OV-10 also are being used by officials in Washington state for nighttime surveillance of fishing vessels suspected of overfishing the coastal waters.

The transfer of the aircraft to ATF comes at a time of heightened public skepticism and congressional scrutiny of the agency's ability to enforce the law without trampling on the rights of citizens.

The ATF's image suffered mightily in the aftermath of its 1993 raid and subsequent shootout at the Branch Davidian compound in Waco, Texas, during which four agents and six Davidians were killed. It sustained another public-relations blow after it was revealed that ATF agents helped organize a whites-only ''Good O' Boys Roundup'' in the Tennessee hills.

Hearings of the Waco matter begin tomorrow in the House. A Senate Judiciary Committee hearing on the racist trappings of the roundup is scheduled for Friday.

One Senate staffer yesterday said there was ''some real interest'' in the ATF's acquisition of the aircraft, and that questions ''probably will be asked very soon of the agency'' about the specifics of their use and locations where they have been assigned.

According to federal law enforcement sources and others, including two airline pilots who have seen and photographed the ATF planes, two of the combat-capable aircraft—known as ''Broncos''—have been routed to Shawnee, Okla., where they were painted dark blue over the past month at an aircraft maintenance firm known as Business Jet Designs Inc.

Michael Pruitt, foreman at Business Jet Designs, confirmed yesterday that two of the ATF aircraft had been painted at the Shawnee site and that at least one more of the OV–10Ds ''was on the way.'' Mr. Pruitt said the aircraft were painted dark blue with red and white trim. The sources said the paint jobs cost the ATF about $20,000 each.

The firm's owner, Johnny Patterson, told associates last month he expected to be painting at least 12 of the ATF aircraft but was unsure whether he could move all of them fast enough through his shop. Mr. Patterson was out of town yesterday and not available for comment.

According to the sources, the ATF's OV–10Ds, recently were overhauled under the government's Service Life Extension Program and were equipped with a state-of-the-art forward-looking infrared system that allows the pilot to locate and identify targets at nights—similar to the tracking system used on the Apache advanced attack helicopter.

Designed by Rockwell International, the OV–10D originally was outfitted with two 7.62mm M–60C machine guns, each with 500

rounds of ammunition. It also was modified to carry one Sidewinder missile under each wing, Snakeye bombs, fire bombs, rocket packages and cluster bombs.

The OV–10D can carry a 20mm gun turret with 1,500 rounds of ammunition.

During the Vietnam War, two OV–10Ds were used for a variety of missions during a six-week period and flew more than 200 missions in which they were credited with killing 300 enemy troops and saving beleaguered outposts from being overrun by the communists.

TRIBUTE TO BEULAH G. VARNELL

Mr. HEFLIN. Mr. President, I want to commend and congratulate an outstanding employee of the Department of Agriculture in Alabama, Beulah G. Varnell. She has been working in various capacities for the Department there for over 50 consecutive years.

Prior to joining the Department of Agriculture's Consolidated Farm Service Agency [CFSA], Mrs. Varnell worked at the Red Stone Arsenal in Huntsville, AL, for a short period of time. In 1945, she began work as Assistant Clerk of Conservation Materials and the next year became Principal Conservation Material Clerk. She progressed steadily over the next few years to Senior Clerk in 1949.

Beulah Varnell has demonstrated exceptional ability to assuming and carrying out many programs, with primary responsibilities for administrative, price support, conservation, wool and mohair, and feed grain. She became Chief Program Assistant in 1966 and is known across the State for her knowledge of CFSA programs and her extraordinary ability to get the job done and done well. This is reflected by her willingness to help out with all other programs in the county office.

She has worked for four different CEO's during her 50 years with the agency. She has always donated annual leave to the leave transfer recipients and maintains 240 hours of annual leave at the end of each year as indicated by all available records. She currently has accumulated 4,103 hours of sick leave, and has never been off work for any extended period of time. There is a familiar anecdote that Beulah once had a wreck while on her way to work and asked that her typewriter be brought to her home so that she could continue her duties uninterrupted. That is dedication.

Beulah married Royce Varnell, who is retired from the Tennessee Valley Authority, in 1950. She is very close to her family, including her brother, 3 sisters, nieces, and nephews. The Varnell's have two farms in Rogersville, AL, one planted with soybeans, the other maintaining several head of cattle. Beulah has lived on a farm in Rogersville all her life and has been associated with all aspects of farming through personal experiences and her job with CFSA.

She is an active member of the Rogersville Church of Christ where she teaches a class. Beulah and Royce have a garden every year and also maintain a numerous assortment of flowers around their home. In her spare time, she enjoys crocheting and quilting. She also enjoys spending time at the camphouse on the Tennessee River, visiting with friends and family.

In short, Beulah Varnell enjoys life to its fullest, and is happiest when helping others. She is a great asset to CFSA and the Department of Agriculture, having always remained totally dedicated to the needs of county producers. I congratulate her and salute her as one of the best examples of public service our Nation has to offer.

IS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Mr. President, the impression will not go away: The $4.9 trillion Federal debt stands today as a sort of grotesque parallel to television's Energizer bunny that appears and appears and appears in much this same way that the Federal debt keeps going and going and going—up, of course.

A lot of politicians talk a good game—and talk is the operative word—about reducing the Federal deficit and bringing the Federal debt under control.

Control, Mr. President? As of yesterday, Monday, July 17, at the close of business, the total Federal debt stood at exactly $4,927,653,309,340.54, or $18,705.46 per man, woman, and child on a per capita basis. Res ipsa loquitur. Some control.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 343, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Levin (for Glenn) amendment No. 1581 (to amendment No. 1487), in the nature of a substitute.

Ashcroft amendment No. 1786 (to amendment No. 1487), to provide for the designation of distressed areas within qualifying cities as Regulatory Relief Zones and for the selective waiver of Federal regulations within such zones.

The PRESIDING OFFICER. The Senator from Missouri [Mr. Ashcroft].

AMENDMENT NO. 1786

Mr. ASHCROFT. Mr. President, throughout the current debate on S. 343, regulatory reform, little has been said about the devastating effects of regulations on America's urban core inner-city centers. Yet it is precisely our Nation's most distressed urban areas which are really threatened as a result of the onerous implications of some of the regulations on the city center. I believe it is time for us to look at those regulations as they relate to the cities and the potential for job growth and development in those cities. And it is time for us to have a look at whether or not we can mitigate the impacts of regulation against some of the areas where job development and growth are most challenging.

So I have submitted an amendment which is called the Urban Regulatory Relief Zone Act of 1995, an amendment to Senate bill 343, which is designed to try to provide that kind of relief. I believe it is in the best interests of our urban centers to be able to develop waivers so when we really find the regulations are hurting the health, the safety, the well-being, the security of our citizens, that, in fact, those regulatory provisions can be waived in cooperation with the Federal Government to provide an opportunity for jobs.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Texas [Mrs. HUTCHISON] is recognized.

AMENDMENT NO. 1789 TO AMENDMENT NO. 1786

(Purpose: To provide for the designation of distressed areas within qualifying cities as regulatory relief zones and for the selective waiver of Federal regulations within such zones)

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself and Mr. ASHCROFT, proposes an amendment numbered 1789 to amendment No. 1786.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be added, add the following:

''TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

This Act may be cited as the ''Urban Regulatory Relief Zone Act of 1995''.

SEC. 202. FINDINGS.

The Congress finds that—

(1) the likelihood that a proposed business site will comply with many government regulations is inversely related to the length of time over which a site has been utilized for commercial and/or industrial purposes in the past, thus rendering older sites in urban areas the sites most unlikely to be chosen for new development and thereby forcing new development away from the areas most

in need of economic growth and job creation; and

(2) broad Federal regulations often have unintended social and economic consequences in urban areas where such regulations, among other things—

(A) offend basic notions of common sense, particularly when applied to individual sites;

(B) adversely impact economic stability;

(C) result in the unnecessary loss of existing jobs and businesses;

(D) undermine new economic development, especially in previously used sites;

(E) create undue economic hardships while failing significantly to protect human health, particularly in areas where economic development is urgently needed in order to improve the health and welfare of residents over the long term; and

(F) contribute to social deterioration to a such degree that high unemployment, crime, and other economic and social problems create the greatest risk to the health and well-being of urban residents.

SEC. 203. PURPOSES.

The purposes of this title are to—

(1) enable qualifying cites to provide for the general well-being, health, safety and security for their residents living in distressed areas by empowering such cities to obtain selective relief from Federal regulations that undermine economic stability and development in distressed areas within the city; and

(2) authorize Federal agencies to waive the application of specific Federal regulations in distressed urban areas designated as Urban Regulatory Relief Zones by an Economic Development Commission—

(A) upon application through the Office of Management and Budget by an Economic Development Commission established by a qualifying city pursuant to section 205; and

(B) upon a determination by the appropriate Federal agency that granting such a waiver will not substantially endanger health or safety.

SEC. 204. ELIGIBILITY FOR WAIVERS.

(a) ELIGIBLE CITIES.—The mayor or chief executive officer of a city may establish an Economic Development Commission to carry out the purposes of section 205 if the city has a population greater than 200,000 according to:

(1) the U.S. Census Bureau's 1992 estimate for city populations; or

(2) beginning six months after the enactment of this title, the U.S. Census Bureau's latest estimate for city populations.

(b) DISTRESSED AREA.—Any census tract within a city shall qualify as distressed area if—

(1) 33 percent or more of the resident population in the census tract is below the poverty line; or

(2) 45 percent or more of out-of-school males aged 16 and over in the census tract worked less than 26 weeks in the preceding year; or

(3) 36 percent or more families with children under age 18 in the census tract have an unmarried parent as head of the household; or

(4) 17 percent or more of the resident families in the census tract received public assistance income in the preceding year.

SEC. 205. ECONOMIC DEVELOPMENT COMMISSIONS.

(a) PURPOSE.—The mayor or chief executive officer of a qualifying city under section 204 may appoint an Economic Development Commission for the purpose of—

(1) designating distressed areas, or a combination of distressed areas with one another or with adjacent industrial or commercial areas, within the city as Urban Regulatory Relief Zones; and

(2) making application through the Office of Management and Budget to waive the application of specific Federal regulations within such Urban Regulatory Relief Zones.

(b) COMPOSITION.—To the greatest extent practicable, an Economic Development Commission shall include—

(1) residents representing a demographic cross section of the city population; and

(2) members of the business community, private civic organizations, employers, employees, elected officials, and State and local regulatory authorities.

(c) LIMITATION.—No more than one Economic Development Commission shall be established or designated within a qualifying city.

SEC. 206. LOCAL PARTICIPATION.

(a) PUBLIC HEARINGS.—Before designating an area as an Urban Regulatory Relief Zone, an Economic Development Commission established pursuant to section 205 shall hold a public hearing, after giving adequate public notice, for the purpose of soliciting the opinions and suggestions of those persons who will be affected by such designation.

(b) INDIVIDUAL REQUESTS.—The Economic Development Commission shall establish a process by which individuals may submit requests to the Economic Development Commission to include specific Federal regulations in the Commission's application to the Office of Management and Budget seeking waivers of Federal regulations.

(c) AVAILABILITY OF COMMISSION DECISIONS.—After holding a hearing under paragraph (a) and before submitting any waiver applications to the Office of Management and Budget pursuant to section 207, the Economic Development Commission shall make publicly available—

(1) a list of all areas within the city to be designated as Urban Regulatory Relief Zones, if any;

(2) a list of all regulations for which the Economic Development Commission will request a waiver from a Federal agency; and

(3) the basis for the city's findings that the waiver of a regulation would improve the health and safety and economic well-being of the city's residents and the data supporting such a determination.

SEC. 207. WAIVER OF FEDERAL REGULATIONS.

(a) SELECTION OF REGULATIONS.—An Economic Development Commission may select for waiver, within an Urban Regulatory Relief Zone, Federal regulations that—

(1)(A) are unduly burdensome to business concerns located within an area designated as an Urban Regulatory Relief Zone; or

(B) discourages new economic development within the zone; or

(C) creates undue economic hardships in the zone; or

(D) contributes to the social deterioration of the zone; and

(2) if waived, will not substantially endanger health or safety.

(b) REQUEST FOR WAIVER.—(1) An Economic Development Commission shall submit a request for the waiver of Federal regulations to the Office of Management and Budget.

(2) Such request shall—

(A) identify the area designated as an Urban Regulatory Relief Zone by the Economic Development Commission;

(B) identify all regulations for which the Economic Development Commission seeks a waiver; and

(C) explain the reasons that waiver of the regulations would economically benefit the Urban Regulatory Relief Zone and the data supporting such determination.

(c) REVIEW OF WAIVER REQUEST.—No later than 60 days after receiving the request for waiver, the Office of Management and Budget shall—

(1) review the request for waiver;

(2) determine whether the request for waiver is complete and in compliance with this title, using the most recent census data available at the time each applicant is submitted; and

(3) after making a determination under paragraph (2)—

(A) submit the request for waiver to the Federal agency that promulgated the regulation and notify the requesting Economic Development Commission of the date on which the request was submitted to such agency; or

(B) notify the requesting Economic Development Commission that the request is not in compliance with this Act with an explanation of the basis for such determination.

(d) MODIFICATION OF WAIVER REQUESTS.—An Economic Development Commission may submit modifications to a waiver request. The provisions of subsection (c) shall apply to a modified waiver as of the date such modification is received by the Office of Management and Budget.

(e) WAIVER DETERMINATION.—(1) No later than 120 days after receiving a request for waiver under subsection (c) from the Office of Management and Budget, a Federal agency shall—

(A) make a determination of whether to waiver a regulation in whole or in part; and

(B) provide written notice to the requesting Economic Development Commission of such determination.

(2) Subject to subsection (g), a Federal agency shall deny a request for a waiver only if the waiver substantially endangers health or safety.

(3) If a Federal agency grants a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) describes the extent of the waiver in whole or in part; and

(B) explains the application of the waiver, including guidance for the use of the waiver by business concerns, within the Urban Regulatory Relief Zone.

(4) If a Federal agency denies a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) explains the reasons that the waiver substantially endangers health or safety; and

(B) provides a scientific basis in writing for such determination.

(f) AUTOMATIC WAIVER.—If a Federal agency does not provide the written notice required under subsection (e) within the 120-day period as required under such subsection, the waiver shall be deemed to be granted by the Federal agency.

(g) LIMITATION.—No provision of this Act shall be construed to authorize any Federal agency to waive any regulation or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, gender, or national origin.

(h) APPLICABLE PROCEDURES.—A waiver of a regulation under subsection (e) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5, United States Code. The Federal agency shall publish a notice in the Federal Register stating any waiver of a regulation under this section.

(i) EFFECT OF SUBSEQUENT ADMINISTRATION OF REGULATIONS.—If a Federal agency amends a regulation for which a waiver under this section is in effect, the agency shall not change the waiver to impose additional requirements.

(j) EXPIRATION OF WAIVERS.—No waiver of a regulation under this section shall expire unless the Federal agency determines that a continuation of the waiver substantially endangers health or safety.

SEC. 208. DEFINITIONS.

For purposes of this Act, the term—

(1) ''regulation'' means—

(A) any rule as defined under section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing under sections 556 and 557 of such title;

(2) ''Urban Regulatory Relief Zone'' means an area designated under section 205;

(3) ''qualifying city'' means a city which is eligible to establish an Economic Development Commission under section 204;

(4) ''industrial or commercial area'' means any part of a census tract zoned for industrial or commercial use which is adjacent to a census tract which is a distressed area pursuant to section 205(b); and

(5) ''poverty line'' has the same meaning as such term is defined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

SEC. 209. EFFECTIVE DATE.

The provisions of this title shall become effective one day after the date of enactment.''.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I sent an amendment to the amendment to the desk because I think Senator ASHCROFT is doing a very important thing for the urban areas of our country. It is clear that we need to do everything we can to create jobs in our urban areas, and particularly in the distressed parts of our urban areas.

I did make a minor amendment in the change of the effective date, but I support Senator ASHCROFT's amendment wholeheartedly and appreciate his yielding the floor to me for this short time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan [Mr. LEVIN], is recognized.

AMENDMENT NO. 1581

Mr. LEVIN. Mr. President, we all want significant and meaningful regulatory reform. No one wants rules that do not make sense. Nobody wants regulatory requirements that exceed real needs. We want Government to be smart, effective, reasonable, and practical.

There are plenty of regulatory horror stories. Some are accurate and some are not. There is more than enough evidence for us to be convinced of the fact that the regulatory process is broken and needs fixing. We spent several months in Governmental Affairs earlier this year considering a bill introduced by Senators ROTH and GLENN which, with a few important amendments, we reported to the full Senate for its consideration. It was passed by a unanimous, bipartisan vote of 15 to 0. It has cost-benefit analysis, risk assessment, legislative review, and a procedure for the review of existing rulings. With a few modifications this is the Glenn-Chafee substitute that is now before us. It is tough medicine that is designed to cure and not to kill the regulatory process.

The Glenn-Chafee substitute is tough because it would require, by law, that every major rule be subject to a cost-benefit analysis and, for key agencies, a risk assessment. It would require that each agency assess whether the benefits of the rule that it is proposing or promulgating will justify the costs of implementing it; and whether the rule is the most cost-effective rule among the various alternative proposals.

These two elements are key to rational rulemaking. It is tough because, by statute, it resolves once and for all the role of the President in overseeing the regulatory process. The bill gives the President the authority to oversee the cost-benefit analysis and risk assessment requirements, and recognizes the significant contribution that the President can make to rational rulemaking.

It gives Congress the right to stop a rule before it takes effect. It is tough because it allows for judicial review of an agency's determination as to whether or not a rule meets the $100 million economic impact test, and because a rule can be remanded to an agency for the failure of the agency to do the cost-benefit analysis or risk assessment.

It is tough because it requires rules scheduled for review to be subject to repeal, should the agency fail to review them in 10 years, according to the schedule and requirements of this legislation.

The Glenn-Chafee substitute also reflects some common sense, because it recognizes that decisions about benefits and costs are, by necessity, not an exact science but an exercise of judgment. It reflects common sense because it does not subject all rules to congressional review, but only the major rules. It reflects common sense because it uses information as a tool for assessing agency performance and makes that information available for everyone to judge and to challenge.

The Dole-Johnston amendment goes too far. In its zeal for reform, it overreaches and damages the very process that it sets out to repair.

It is not reform. It is overload. It is like throwing a bucket of water to a drowning person. It is as if a doctor is tripling the prescribed dosage in order to get a better effect. It ends up actually harming the patient instead of helping.

While the Dole-Johnston substitute is an improvement over S. 334, as introduced, and has been improved in some way, it still falls far short of the goal that we need for regulatory reform, which is to improve the regulatory process so that it works better, results in rules that make sense, and at the same time we maintain the important health, safety and environmental protections that Americans expect and deserve. The Dole-Johnston substitute would bog down—rather than clean up—the regulatory process, and would put important health, safety, and environmental protections needlessly at risk.

The Cabinet officials of this administration have issued a statement of policy stating that they would recommend that the President veto S. 343 in its present form, as of July 10, 1995, when the policy statement was written. The summary states that the cumulative effect of S. 343 would burden the regulatory system with additional paperwork, unnecessary cost, significant delay, and excessive litigation, and then states in a very unusual document that the Secretaries of Labor, Agriculture, Health and Human Services, Housing and Urban Development, Transportation, Treasury, Interior, EPA, and the Director of OMB all would make that recommendation for a veto.

This document has been put in the RECORD. It sets forth paragraph by paragraph, issue by issue, and item by item why the Dole-Johnston approach represents overload, why it would drown the system instead of repairing it.

The Glenn-Chafee substitute would fundamentally change, as we should, the way that Federal regulatory agencies do business. At the same time, it would keep a system that would allow us to preserve critically needed health, safety, and environmental approaches. The Glenn-Chafee substitute would help prevent regulatory agencies from issuing rules that are not based on good common sense or on good science, or that would impose costs that are not justified by the benefits of the rule. But it would not inhibit or prevent agencies from taking the necessary steps that the American public wants to take to protect their health and their environment and their safety.

The question here is the balance that we are going to set. That is really the issue. And it is an incredibly detailed and arcane bunch of issues that we must deal with. But if we make a big mistake and go way too far and bog down a system in a whole series of new approaches subject to litigation, we will end up doing a tremendous disfavor, not just to the American people but to the business community itself, which also needs the regulatory system to work.

Glenn-Chafee strikes a good balance in a number of ways. First, all Federal agencies would be required to perform and publish cost-benefit analyses before issuing major rules. The agencies would be required to compare the costs and benefits of not only the proposed rule but of reasonable alternatives as well, including non-regulatory, market-based approaches. The agencies would be required to explain whether the expected benefits of the rule justify the cost and whether the rule will achieve the benefits in a more cost-effective manner than the alternatives. The cost-benefit analysis would be reviewed by a panel of independent experts, and the agencies would be required to respond to peer reviewers' concerns.

Under Glenn-Chafee, the major regulatory agencies would be required to perform and publish risk assessment before issuing major rules regulating

risks to the environment, health, and safety. The risk assessments would be required to be based on reliable scientific data, and would disclose and explain any assumptions and value judgments. The risk assessment would have to be reviewed by a panel of independent experts, and agencies would have to respond to peer reviewers' concerns. Federal agencies would be required to review important regulations, eliminate unnecessary regulations, and reform any that do not meet the new standards that this bill would create. If an agency fails to conduct a review within the time required by the schedule, it would be required to issue a notice of proposed rulemaking to repeal the rule rather than to have the rule automatically sunset. That rulemaking would have to be completed in 2 years. That is one of the key differences between the two approaches that we will be deciding a little later on today.

Congress would have under Glenn-Chafee 45 days before issuance of any major rule to review the rule, to prevent it from taking effect by passing expedited procedures in a joint resolution of disapproval. That finally would put elected representatives in a position to assure that agencies' rules are consistent with Congress' intent. And this is the power that I have fought to create as long as I have been in this body.

Under Glenn-Chafee, covered agencies would be required to set regulatory priorities, to address the risks that are most serious and can be addressed in a cost-effective manner. Agencies would be required to explain and reflect these priorities in their budget requests.

Every 2 years the President would be required to report to Congress the cost and the benefits of all regulatory programs and recommendations for reform. The OMB would be required by law to oversee compliance with the bill, and would be required to review all major rules before issuance. This would strengthen Presidential control over regulatory agencies, particularly the independent agencies.

The Glenn-Chafee substitute includes all of the provisions that we need to produce lasting and meaningful regulatory reform. In a number of respects Glenn-Chafee goes farther than the regulatory reform bill passed by the House of Representatives, H.R. 9, which does not provide for the review of existing regulations or congressional review, or the integration of comparative risk analysis into agency priority setting and budget.

Glenn-Chafee goes past S. 1080, the Omnibus Regulatory Reform bill that passed the Senate overwhelmingly in the 1980's. And no one can seriously dispute the fact that the GLENN-CHAFEE substitute is a strong regulatory reform bill. Again, it passed the Governmental Affairs Committee with statements of just how strong it was just a few months ago by a unanimous bipartisan vote.

How does that compare to Dole-Johnston? Dole-Johnston would impose new and sometimes conflicting decisional criteria, essentially displacing standards in existing laws by forbidding issuance of any rule unless the criteria are met. This is one of the most troubling features of the proposal. And one of my concerns about Dole-Johnston is that it would so encumber agencies that it would swamp the regulatory process rather than reform it, making it a greater burden rather than a lesser one.

No one can disagree—I do not think anyone is arguing against this—that we should only have rules where the benefits justify the cost. The GLENN-CHAFEE substitute has that standard. It requires every agency to certify that the benefits justify the costs, and if it cannot so certify, to explain why.

The way that the Glenn-Chafee bill works is that since all major rules are presented to Congress 45 days before they take effect, if there is a rule which the agency head says is appropriate for whatever reasons but that the benefits do not justify the cost, we in Congress will then have an opportunity to decide whether or not such a regulation whose benefits do not justify its costs should take effect. There will be times where we will decide it should, for whatever reason. It may be that the underlying law requires it. But where an agency head, as part of the cost-benefit analysis, tells us that the benefits do not justify the cost, we then are in the position to decide whether or not it is still our intention that the rule go into effect. That is the real power of the legislative review process.

An agency may also not be able to certify that the benefits justify the cost because the underlying statute may have required that the agency regulate without regard to the cost effect.

Congress may have decided that an agency should issue a rule establishing the safe level of a toxic element in the air and that we want that level achieved regardless of what the cost implications might be. So assessing the cost and the benefits may simply not be an option for that agency. Well, we want the agency to tell us that so that we, elected officials, accountable to the people, can decide: Do we really want to impose a rule that has costs which cannot be justified by the benefits? We may pass laws that say that, but when it comes to the rulemaking, we should have an opportunity and be forced to consider the actual costs that we are imposing on this society. We have that in the Glenn-Chafee substitute.

Now, the Dole-Johnston substitute has a different approach. It says specifically that an agency cannot regulate unless it finds that the benefits justify the costs, or if the rule cannot satisfy that criteria, the rule must meet three other tests including that it adopts the least cost alternative and that it results in a significant reduction in risk.

Last week, we adopted an amendment that reaffirmed what the sponsors of the bill had been saying in this Chamber, that the decisional criteria of their bill do not override any existing statute—and that was an important issue to clarify—that where there is a conflict between an underlying health, safety or environmental law and the decisional criteria of Dole-Johnston, it is intended that the underlying statute govern. But the problem is that probably in most cases there will not be a direct conflict. And in those cases the Dole-Johnston decisional criteria could be interpreted as governing. So now let us look at the criteria.

Least cost of the Dole-Johnston decisional criteria would require that an agency pick the least cost alternative in choosing how to regulate. Now, on the surface that may sound right, going with the least expensive, but once the surface is scratched, this approach not only fails the commonsense test, it is inconsistent with the cost-benefit test.

Why would we want to restrict Federal agencies to picking the cheapest way to regulate when in many cases it will not be the best way to regulate and will not be the most cost effective way to regulate? Why would we want to deny agencies from getting the biggest bang for the buck out of the regulatory scheme? If going with the cheapest were always the best approach, we would all be driving Yugos.

Now, if, for $100 million in costs, we can save 1,000 lives, but for $110 million in costs, we can save 2,000 lives, ought we not be able to go with the slightly more expensive approach for double the savings in lives even though the lower cost-smaller savings in lives approach might meet the minimal statutory criteria?

Statutes usually have a range. They usually describe things in terms of minimal safety and allow discretion for the agency. Do we want to tell an agency that you cannot spend that extra 10 percent to double the savings in lives? Is that really what we want to do? Then why do the cost-benefit analysis? There is an inconsistency.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. LEVIN. I will be happy to yield for a question. But before I do yield, let me say this. I am going to get to the issue which the Senator and I have discussed over the last few days, which is whether or not there is an exception then to the least-cost approach. I am going to address that issue immediately and then perhaps he could ask a question after I address the exception which the Senator from Louisiana has pointed to as to why we are not driven always to least cost. I know that is the Senator's position. However, the language is quite clear. And I will be addressing what he calls an exception to show that it is not an exception. But I would be happy to get into that issue.

Mr. JOHNSTON. Is the Senator seriously saying that if you can save, what

was it, 10,000 lives for $1 million, that for an extra $100,000 you could not save another 1,000 lives—is the Senator really saying that he believes that about our bill?

Mr. LEVIN. I do, because that is clearly quantifiable. I just quantified it. And that is the way the agencies read the Dole-Johnston bill, and that is why the agencies have written a statement, and that is why the bill should be amended, and that is why we have discussed an amendment, one of a number of amendments to the Senator's bill. Since I have just quantified it, it is not eligible for the exception. The exception only applies where it is not quantifiable, and I have just given a quantified exception.

I have just said for $100 million you can save 1,000 lives, but for $110 million you can save 2,000 lives. Now, the Senator is going to say and has said, well, that is nonquantifiable and therefore it is subject to this exception, to the least cost approach because the value of a life cannot be quantified.

First of all, agencies do quantify it, but, second, in my hypothetical I have quantified it precisely and that is the way the agencies read this language. So we can sit here all day and debate as to whether or not, when you have 1,000 lives as a quantified benefit, that is quantified or nonquantified since for many of us the value of a life cannot be quantified.

Mr. ASHCROFT. Will the Senator yield?

Mr. LEVIN. But the agencies read it this way, and I think it should be clarified.

I will be happy to yield for a question.

Mr. ASHCROFT. Will the Senator say that the benefit is the same benefit if 100,000 lives are saved or if 200,000 lives are saved?

Mr. LEVIN. No.

Mr. ASHCROFT. It is a different benefit.

Mr. LEVIN. I would say a different benefit, both quantified but they are different.

Mr. ASHCROFT. Both quantified. And the cheapest 200,000 lives would be a separate calculation.

It seems to me, if those are different benefits, the agency would not be required then to employ the so-called cheapest but could employ, it could employ the benefit for the greater savings because it is a different benefit and the calculation would be the cheapest for that different benefit.

Mr. LEVIN. I would think the agency should be able to do it, but under this language the only exception, certain exception to the requirement is to take the least costly approach. And you can only do it where it is a nonquantifiable benefit, and I think the Senator would agree with me this is a quantifiable benefit.

Mr. ASHCROFT. That is right. But since it is a different benefit, it is a different calculation. It seems to me that if the benefit is different, that if the extra lives mean it is a different benefit——

Mr. LEVIN. It is the same rule.

Mr. ASHCROFT. It is the same rule. But if it is a different benefit, then it is a different cost-benefit ratio and the cheapest for the different benefit is the superior one for which the Senator has argued.

Mr. LEVIN. You would think that the agency in applying that rule ought to be able to spend the extra 10 percent to double the number of lives.

Mr. ASHCROFT. My view is and my question was——

Mr. LEVIN. Would the Senator agree with that?

Mr. ASHCROFT. I would agree that for a nickel more you can go first class is the old way of saying that, and if first class means that you get more lives saved per value committed, I think we would want to be able to do that.

Mr. LEVIN. I think so, too.

Mr. ASHCROFT. My sense is that if it is a different benefit——

Mr. LEVIN. The number is different. If the Senator says a different benefit, the number is different. It is twice as large.

Mr. ASHCROFT. That is correct. And it seems to me that means this bill should be driving that—that if the number is different, it is a different benefit, and we should get to that number the cheapest way possible. In getting to any other number, the cheapest way possible should be our objective. If we decide to save 120,000 lives, there is a cheapest way to get there. And if we want to save 100,000 lives, there is a cheapest way to get there. And it seems to me, since those are different benefits, the Dole-Johnston proposal would allow us to get to those benefits by the cheapest strategy.

Mr. LEVIN. I think I would agree with the Senator that we ought to try to have a cost-benefit in what we do. The problem is that when we legislate, we do not say save 1,000 lives or we do not say save 2,000 lives. What we say is that the agency should regulate emission of a certain element going into the air in order to achieve a safe level. And then we give to the agencies typically, because we do not know here precisely what that safe level is frequently, some discretion. And then the agency is told to do a cost-benefit analysis.

That is our requirement in this bill, to do a cost-benefit analysis. Now the agency says—and this is my hypothetical—the agency cost-benefit analysis says, for 100 million bucks, you are going to save 1,000 lives. If you want to spend $110 million, you are going to save 2,000 lives.

Mr. ASHCROFT. You are doing something else; you are doing something different.

Mr. LEVIN. If the Senator will yield, that is what the cost-benefit analysis describes to the agency doing that analysis. The point is, will you allow the agency, using that cost-benefit analysis, to go to the $110 million instead of $100 million, even though the $100 million may meet the minimum threshold, since there is a range allowed by definition, or else you would not be doing the cost-benefit analysis? You would not need to. It would not be as relevant as it otherwise should be. You are doing a cost-benefit analysis most of the time because a range is permitted, and if a range is permitted under the statute, the question is then, will you allow the agency discretion to implement something more expensive than the least costly, if you can, for a small incremental amount to significantly increase the benefit?

I think the intention of the sponsors is to allow the agency to do so. However, we have pointed out over and over again that the language of the bill does not permit the agency to do it, because it says that unless the benefit is nonquantifiable—nonquantifiable—you cannot go to anything but the least costly.

Mr. JOHNSTON. Will the Senator yield on that point?

Mr. LEVIN. So we have urged the sponsors to strike the word ''nonquantifiable'' before ''benefit.'' When the word ''benefit'' is defined earlier in the statute, it says ''quantifiable or nonquantifiable.'' But in this exception to the requirement for least cost, the limitation of nonquantifiable is before the word ''benefit.'' In my hypothetical, I have given a quantifiable benefit, 1,000 versus 2,000 and $100 million versus $110 million. Then the agencies read this and I read this as being a quantifiable benefit, thereby not subject to the exception.

The Senator from Louisiana has argued that that is a nonquantifiable benefit because you cannot quantify the value of a human life. Even if that were conceded, the problem is that the benefit that we are quantifying here is the number of human lives, and agencies read that as a quantifiable benefit. I happen to think the intention of the sponsors is that you are or should be allowed to go to something more expensive than the least costly. That is what they keep telling us. But the language remains restricted in that way, and that is what I am addressing.

Mr. JOHNSTON. Will the Senator yield?

Mr. LEVIN. I will be happy to.

Mr. JOHNSTON. If we struck that word ''nonquantifiable,'' I take it, it would solve the Senator's problem?

Mr. LEVIN. It would solve that particular problem in the criteria. That is one of three problems, and it would solve that problem.

Mr. JOHNSTON. If the Senator will yield the floor, I am prepared to offer such an amendment.

Mr. LEVIN. I am not prepared to yield the floor. I will yield in about 10 minutes.

Mr. JOHNSTON. All right. I have an amendment prepared to that effect.

Mr. LEVIN. I would like to finish my statement, and then I will be happy to yield. I want to commend the Senator

for that change which has been the subject of about a day's debate here.

There is another criterion, so-called decisional criterion, in Dole-Johnston which is that the regulation must result in a significant reduction in risk. That is another hurdle that the agency has to go through before an agency is allowed to regulate. This one does not make sense either.

What if an agency can reduce the risk for very little money but cannot prove that it is a significant reduction in the risk? Should an agency be able to regulate if there is a reduction in the risk to our safety or our food or the environment which may be not a significant reduction but is a reduction and is worth doing on a cost-benefit basis because the cost is so slight that even though the benefit is not major, nonetheless it is justified?

Dole-Johnston would establish a whole new standard and would require the agencies to show that the reduction in risk is significant, even though the cost might be minimal.

The Department of Transportation has informed us that if they had to meet this test when regulating for shoulder belts or for lap belts for the back seat, that they may not have been able to have met that test. The shoulder belt lessens the risk by 10 percent over the reduction in the risk for the lap belt, and they are not confident that would meet the test for significant. But the cost may be so nominal that they may decide it is worth doing anyway, although the benefit is not a major benefit.

So there is another problem with the decisional criteria which can be addressed by striking that word so that the cost-benefit analysis will be driving this, even if the benefit is modest, where the cost is far more modest.

Another problem with Dole-Johnston is that each of the decisional criteria that they set forth—and we have discussed two of them here—establishes another basis for legal challenge. Each of these criteria forms the basis for judicial review and judicial second-guessing of the agency's rulemaking decision.

For instance, if the agency decides benefits justify the cost, did the agency pick a rule that provides for market-based and performance-based standards? Did the agency pick a rule that was least costly? Were there any other alternatives slightly less costly? Does the rule provide for significant reduction in risk? What is significant? Was the agency right in valuing the risk reduction as significant?

The litigation that is possible with these decisional criteria is almost endless. The whole judicial review problem with Dole-Johnston is another major issue of concern, and we have spent some time discussing this with the sponsors, both on and off the floor.

We believe, based on what agencies tell us, that courts would be asked to interpret over 100 different issues. One massive golden opportunity for litigation is the requirement in the bill that an agency consider and do a cost-benefit analysis on every reasonable alternative presented to them. This is not limited to a significant number of reasonable alternatives. The agency is required to respond and do a cost-benefit analysis for every reasonable alternative for regulation, and this is all subject to judicial review.

What does that mean? Say an agency is issuing a rule to establish a health or safety standard for a toxic substance in drinking water. They are looking at—I am making up a substance, a number here—the agency is looking in the range of 12 parts per billion of a certain substance. What happens if somebody suggests 11½ parts per billion; someone else suggests 12½ parts per billion; someone else suggests 11 parts per billion; someone else 13 parts per billion? Each of these, let us assume, the agency considers to be a reasonable alternative. Under Dole-Johnston, that requires the agency to consider and do a cost-benefit analysis on each of these possibilities. That analysis would then be subject to judicial review to see why the agency did not pick one of those other reasonable alternatives. It is endless.

Another aspect, a judicial review problem of Dole-Johnston is the fact that the bill allows for interlocutory appeals of an agency's determination as to whether or not a rule is major, whether or not it should be subject to a risk assessment, whether or not it should be subject to a regulatory flexibility analysis.

This is unprecedented in 50 years of the Administrative Procedure Act. We have not had interlocutory appeals under the Administrative Procedure Act. This is the opportunity to go to the court and have judicial review of an agency action before the action is taken, before it is finalized.

In this case, that means that after an agency has issued a notice of proposed rulemaking, a party—it is not clear what level of standing would be required by a party in order to bring an interlocutory appeal—but a party to the notice of rulemaking may take the agency to court within 60 days to challenge the agency's preliminary decision that a rule is not major, does not need a risk assessment, does not need a regulatory flexibility analysis.

When a rulemaking is at its early stages, the public is expected to make comments to the agency about the impact of the rule. It may be that during the rulemaking process, the agency is presented with new and sufficient evidence for the agency to decide that indeed the rule is a major rule, or is one that does require a risk assessment, or one that does require regulatory flexibility analysis. But with the interlocutory appeal, if a party did not challenge the agency at the beginning of a rulemaking, it is foreclosed from raising a challenge at the end of the rulemaking, regardless of what is learned during the actual rulemaking process. And that is why, when we were considering the Nunn-Coverdell amendment, I noticed that I thought this was going to hurt small businesses and small governments because they are going to lose the opportunity of learning about the impact of a rule from rulemaking so that they can challenge those critical issues after the final rule is adopted.

They are given an opportunity to challenge it early when there is a preliminary notice, but unless they take that interlocutory approach, they are then foreclosed from appealing at the end of the process, after they know the facts upon which they can make the appeal. We are not doing a favor to small businesses when we are doing that.

On the other hand, if we allow them both at the beginning and the end, then you are going to have excessive litigation and two bites at the apple. So the alternative that the Administrative Procedure Act used all these years is to say you can appeal these decisions at the end of the rulemaking process. But what this bill does for the first time is creates this interlocutory appeal early in the rulemaking process, thinking we are doing a favor for small businesses and small governments and, in fact, we are not doing so at all.

Now, another consideration is the strong concern by the Justice Department that the court will entertain requests by a party bringing an interlocutory appeal to suspend the rulemaking during the court's consideration of the appeal. That is a logical request; we are making an interlocutory appeal early in the rulemaking and suspending the rulemaking pending the appeal. Although it is not expressly permitted by the legislation, it is not expressly prohibited either. Should the courts begin granting these delays, months, and perhaps years, would be added to the rulemaking process.

The Glenn-Chafee substitute permits judicial review of an agency's determination as to whether or not a rule is major, but that occurs after the final rule is issued. The knowledge that a rule can be challenged at the end on that basis will make an agency proceed with its determination very carefully. It is an important deterrent, knowing that its decision on that issue and a number of other issues are subject to appeal at the end of the process.

Another problem with the judicial review in the Dole-Johnston substitute is the change that it makes to section 706 of the Administrative Procedure Act. That is another big difference in these two pieces of legislation. The Dole-Johnston bill not only establishes requirements for cost-benefit analysis, risk assessment, and for major rulemaking, but it also rewrites the Administrative Procedure Act, which applies to all rulemaking, and, in doing so, rewrites almost 50 years of case law.

With respect to judicial review, the Dole-Johnston substitute adds a new standard for judicial review of an agency's rulemaking. For 50 years, the standard has been arbitrary and capricious for informal rulemaking and substantial evidence for formal rulemaking. The Dole-Johnston substitute adds a third—substantial support in the rulemaking file for the factual basis of an informal rulemaking.

Now, I do not know the difference between substantial support and substantial evidence. But I do know it will be a greatly litigated issue. It may make great business for the legal community, but otherwise, it is going to be doing nothing but producing mischief.

I have been advised that some judges have stated there is very little difference between the substantial evidence and the arbitrary and capricious test. Other courts have articulated a difference, concluding that the arbitrary and capricious test is more deferential to agency decisionmaking.

Now, the Dole-Johnston substitute would add a whole new test, and briefs will be filed and cases developed, splitting the hairs between substantial support and substantial evidence. Of course, the difference between both is arbitrary and capricious. We should not do it. There is no reason given here to do it. We are adding a new test without any clarity. It is the difference between that test and the one currently applied in the Administrative Procedure Act. We are not doing anybody who has to live in that regulatory process a favor by doing that.

Now, another serious problem with the Dole-Johnston substitute is the provision on how existing rules are to be reviewed, or lookback, as many of us call it. Now, lookback is important. It is important because we want rules that have been in existence for years and which have gone unchallenged, but which may be causing serious problems, to be reviewed under the new standards and the requirements of regulatory reform. But how we do that is very important.

The Dole-Johnston substitute establishes a process by which, every 5 years, each agency reissues a schedule for the review of rules. A rule, once put on the schedule, is to be reviewed within 10 years. However, Dole-Johnston permits a private party to petition to have a major rule added to the schedule for review, and if it is, then that major rule must be reviewed within 3 years. The 10-year review cycle for these added rules is telescoped to within the next 3 years.

S. 343, as originally introduced, was severely criticized because, through the use of multiple petitions—that is, request the agencies to take certain actions—outside parties would be able to control the priorities of a Federal agency and divert and direct Federal resources. While an attempt has been made to address that problem, it still remains.

By allowing persons to petition to get major rules added to the schedule and then reviewed within 3 years, we are right back where we were when the original S. 343 was introduced, by having agency priorities dictated by outside parties. Moreover, the bill allows an outside party to petition to place a major rule on the schedule of rules to be reviewed, even if the agency is already included in the schedule. So even though the agency has included a rule on the schedule to be reviewed, an outside party could petition the agency to include it on the schedule to be reviewed. Why? Because that way it gets an earlier review. The agency may have said we are going to review it in the fourth, fifth, or seventh year, and a party not satisfied with that, even though the rule it is worried about is already on the petition, is nonetheless going to ask that it be put it on the schedule anyway, because when it wins—and it will win because, by definition, the agency would concur with it—this time the party will get its rule reviewed within 3 years.

Now, what that means is hundreds of people in each agency, having an interest in rules, every 5 years is going to be jockeying for where on a schedule of review its rule is going to be, and that is judicially reviewable.

Now, mind you, it can take up to 10 years to review the rules on that schedule. But every 5 years every agency—many of them with hundreds of rules and thousands of petitioners—is going to have to adopt a schedule, and the schedule is judicially reviewable. It probably would take 5 years just to review the petition and the judicial appeals of people jockeying for support for where on a schedule their rule is going to be reviewed.

Finally, we get through all the appeals, if the courts can figure all this out. Hundreds of petitioners, hundreds of rules, each agency, the 5 years comes and what happens? Presumably, you would think the agency would have 10 years in which to find and implement the schedule. No, every 5 years they have to issue a new schedule. Right in the middle of a 10-year review period they have to issue a new schedule which is subject to judicial review.

This is a prescription for regulatory hash. This is going to be nothing but a litigious mess with this kind of a system.

We are not doing people a favor who are now bedeviled by a regulatory process, who are now wasting a fortune in complying with rules that we should not have adopted; that now we are in court all the time challenging agencies, by adopting a system which says that we will review rules, where on the schedule they go. It is all subject to litigation. Anybody can challenge it. If it is not on the schedule, that is subject to litigation.

Every agency has its own schedule. There could be hundreds of rules that an agency is implementing. That is not an unusual number. There could be thousands of people who are interested in those rules who would have standing to challenge that schedule.

Finally, if you can get through that, if you can get through that whole bunch of roadblocks and hurdles, when you are ready to start to implement the schedule, a new 5-year trigger begins. You have to start all over again.

This is one of the reasons why we say that this approach is too cumbersome and that we will swamp the regulatory process instead of simplify it, and instead of eliminating the pieces of it which are driving folks nuts.

There is broad agreement in this body that we have overregulated, that too often we have imposed costs without adequate benefits, that we ought to require cost-benefit analysis and risk assessment, that we ought to look back at existing rules. I do not think there are two Members of this body that do not agree with those principles.

The problem is whether or not we can implement this in a way which will allow agencies to breathe, so they can carry on their functions of preserving the health, safety and welfare of this Nation, where we want them to do it. Can we strip away from them the excess, without dumping on them such impossible tasks that we are going to tangle up the process so that nothing can get done, and benefit nobody.

We have businesses that want these rules to be reviewed. I think most Members in this body want to review existing rules according to new standards, but we have to do it in a way that works; otherwise we can vote aye and think we are doing something good for our society, and end up creating a monster.

Every denial of a petition to be on the schedule is subject to judicial review. Then we have 60 days after publication of a final schedule to sue, to have the court review the appropriateness of the schedules as a whole, or the denial of an individual petition to place a major rule on the schedule.

All of these cases, in all of these agencies, are supposed to be heard in a circuit court of appeals for the District of Columbia, and they all have to be filed in the same timeframe. The court of appeals will have to review all these schedules and all these petition denials in about the same time.

Now, additionally, Mr. President—and I am almost done—there are serious problems with the multiple petitions that are permitted by this legislation. The Dole-Johnston bill adds several new things that you can ask an agency to do within a certain time period and have a denial subject to judicial review. Current law allows petitions to an agency at any time for the issuance, amendment, or repeal of a rule. That is under current law.

So if you ask an agency to issue a rule, amend a rule or repeal a rule, you can file a petition, but there is no deadline in current law by which an agency has to respond. If an agency does not respond to that request, a petitioner

can go to court and force the agency to respond to the petition, if the agency fails to do so.

Now, that is current law. So there is an opportunity to go to court in that narrow area where an agency fails to respond to a petition for the issuance, amendment, or repeal of a rule.

The Dole-Johnston substitute expands current law on petitions by adding to the Administrative Procedure Act two additional purposes for which an interested person can petition an agency. You can ask for the amendment or repeal of an interpretive rule, or the amendment or repeal of a general statement of policy or guidance. You can ask for the interpretation regarding the meaning of a rule or the meaning of an interpretive rule or general statement of policy or guidance.

Whereas, under current law if you ask for the issuance, amendment, or repeal of a rule, and the failure to respond is subject to a court intervention, under the Dole-Johnston substitute, if you ask an agency to amend or repeal or interpret an interpretive rule, general statement of policy or guidance, that also, now, becomes subject to judicial review.

Agencies do a lot more than issue rules. They issue guidance all the time, interpretations all the time, statements of policy all the time, probably by the thousands, in order to help people understand and work through a complicated regulatory system.

Under Dole-Johnston all of that—I do not know and no one knows how many thousands, tens of thousands, or hundreds of thousands of requests there are for interpretation and guidance that are filed with these agencies each year; we do not know—will now be subject to deadlines and to judicial review. That is the block that we are superimposing on this regulatory process.

The agency can either deny or grant those requests for all of that material within 18 months. Judicial review is immediate upon a denial. This, again, is going to dramatically change an agency's control over its priorities and its resources. Agencies can just simply be overwhelmed—and I emphasize, this is new. The ability to submit a request is not new. They have been asked for a decade. What is new is that now all these requests for guidance and interpretation are now going to be subject to deadlines and court review. That is what is new, massively new, overwhelmingly new.

We should be trying to downsize Government, not swamp it. We should not let the agencies become total victims of random and multiple tugs and pulls from either individuals or interests that have special axes to grind.

Agencies also have a national purpose to be achieved. They have not done an adequate job of responding to individuals. Everyone in our office spends too much time trying to force agencies to respond to our constituents—sometimes just to respond, much less to respond fairly or in an appropriate way.

They have to do a much better job. This will overwhelm an agency by providing court appeals, following deadlines, even where there is a response, because the response is subject to judicial review.

Now, there are two additional opportunities, in addition to what I have just said, that Dole-Johnston makes available to people who are making requests of rulemaking agencies.

Any interested person can petition an agency under Dole-Johnston to review a risk assessment, other than a risk assessment that is used for a major rule. The agency must act within 180 days under that petition and the agency denial of the petition would be judicially reviewable as a final agency action.

Also, any person subject to a major rule can petition an agency to modify or waive specific requirements of the major rule and authorize such person to demonstrate compliance through alternative means not otherwise permitted by the major rule. The agency must act on that petition within 180 days.

Now, while there appears to be no judicial review of any agency action with respect to this latter petition process, nonetheless, given the number of people who are subject to major rules, an agency could be flooded with petitions for alternative means of compliance, each of which would have to be responded to within 180 days.

A big part of the legislation which all of us are working on, and some of us are struggling with, is to get agencies to prioritize their regulatory activity so that we are putting Government resources on the most important risks, the most important dangers, and not spending excessive time and effort with less significant matters. Opening each and every agency to their responsibility to not only respond but to defend against hundreds, probably thousands of new kinds of petitions for specific regulatory actions, takes us in the opposite direction. The Dole-Johnston substitute tries to address it by providing for a consolidation of some of the petitions that are permitted in the bill, and for the judicial review of those petitions. But that is only for petitions relating to major rules. Petitions related to nonmajor rules are treated the same as the original Dole bill and can be made at any time and as often as people like.

Dole-Johnston provides a procedure for the review of existing rules. Each agency would be required to issue a proposed schedule for the review of rules which can contain major and nonmajor rules. Those schedules would be subject to public notice and comment. Private persons can also petition an agency to add a major rule to the schedule. A petitioner has to show that the rule is major and that there is a substantial likelihood that it does not meet the decisional criteria in the bill. All the petitions must be filed within a limited time period while the schedule for the review of rules is being considered. The schedule is issued every 5 years, and rules on the schedule are to be reviewed within 10 years, as we have said, with the possibility of a couple of years' extension.

However, if a petitioner is successful, the Dole-Johnston substitute provides that the review of the petitioned rule gets bumped up to the first 3 years of the 10-year period. So any rule that is added to the schedule by petition must be reviewed, not within 10 years, but within 3 years. And, if it succeeds, it then bumps a rule that was already within that 3-year period, presumably, since there are a finite number of rules that can be reviewed within a 3-year period.

So you are going to have all the jockeying and all the petitions filed in the court in order to try to get a position on the schedule which is high up. And if one fails, then there is a petition to get on the schedule so that you can get a higher position. Once the final schedule for each agency is published, again, parties will have 60 days to file suit and suit can be brought to challenge the denial of being on the schedule. Or even in the event that you are on the schedule, again, you can bring a suit in order to improve your position.

Mr. President, let me conclude by saying this. The Dole-Johnston substitute simply goes too far. In its effort to reform it will swamp the very process that it sets out to repair. It is not reform, it is bureaucratic overload. It is like throwing a bucket of water to a drowning person instead of a rope. The Glenn-Chafee proposal, that we will be considering later on today and voting on, embodies the bill passed by the Governmental Affairs Committee. It is reform, it is not overload. We simply must do two things and can do two things. We can have reform of the regulatory process, but we can do it in a way that does not jeopardize important health, safety, and environmental protections which have improved our lives in America.

We want to be able to trust the water we drink and the food that we eat and the air that we breathe and the planes that we fly and the bridges that we cross. And we can have that. We can avoid regulatory excess. And the way to do that is to adopt the Glenn-Chafee substitute.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, the amendment I am offering with Senator GLENN and many of our other colleagues is a solid proposal for regulatory reform. The purpose of regulatory reform legislation is to improve the quality of the regulations that are issued by the Federal agencies. That is what we are trying for. What we want to do is to weed out the bad rules, the rules that do not make sense. We want

the science and the economics used to design rules to be of the best quality. And we want rules with flexibility built in, to make the compliance burden as small as possible.

I believe the Glenn-Chafee substitute accomplishes many reforms. Let us tick a few off. It requires a cost-benefit analysis for every major rule. It requires agencies to select the most cost effective option that achieves the goals establish by the law. It requires agencies to select regulatory options that provide the greatest flexibility for compliance and recognize the compliance difficulties faced by small businesses and towns, small towns. It requires rules with costs that are greater than the benefits to be identified before they are promulgated. It requires OMB to review the cost-benefit studies in an open process that gives access to all those with an interest. It establishes expedited procedures for Congress to review major rules before they become effective, so that poorly drawn rules with unjustified costs can be stopped. That is the 60-day review process that we have. It includes clear principles for risk assessment. It requires each agency to establish a peer review process, ensuring that the science used to make important determinations is the best available. It requires agencies to develop an agenda to review existing rules and to repeal rules that are no longer needed or that cost too much.

It gives courts authority to enforce the review requirements of the Regulatory Flexibility Act, ensuring that rules affecting small businesses and small towns recognize their compliance problems. And it requires agencies to reexamine budgetary and enforcement priorities and to modify programs to maximize the reduction in risks to health and to the environment.

OK, it does all of those things. These are important steps that will improve the quality and reduce the compliance burden of Federal regulations. Some people have said, ''Oh, the Glenn-Chafee bill is just status quo. It just repeats what we have now.'' That is absolutely not so, as he have delineated in the prior points. Now, these are important steps that will improve the quality and reduce the compliance burden of Federal regulations. I am confident that these steps can be taken without undermining our environmental or health laws.

But there are several other things, so-called reforms, that this bill does not have. And they are not reforms at all, they are steps backward.

It does not include extensive special interest petitions to force endless rounds of review for every new and existing rule, risk assessment, and enforcement action taken by an agency. That is what Senator LEVIN was talking about.

It does not direct agencies to pick the least costly action a statute allows. Under the least cost approach an agency can not go for a slightly more expensive approach that will produce many more benefits. You are locked in at the lowest cost, and that is not good.

It does not allow Federal judges to second-guess the complex data, assumptions, and calculations that are developed through risk assessment to support a rule. The judges cannot go fishing back into all of that.

It does not automatically sunset existing rules because an agency did not have the resources to carry out a review ordered by a court.

It does not waste millions and millions of taxpayers' dollars on studies and assessments and lawsuits for minor rules.

And it does not delay for months, even years, needed and justifiable rules to protect health and safety and the environment while endless rounds of review are conducted to ensure that rules meet a standard of near perfection.

Senator GLENN has many times suggested a two-part test for the Senate to use in comparing these two bills. I recommend to my colleagues that they pay attention to these two points.

First, would the bill produce better rules, rules that are more cost effective and have a foundation in good science and economics?

Second, does the bill threaten to undermine the health, safety and environmental protection that has been achieved by the laws we have enacted over the past 25 years?

We want reform without a rollback. That is the test.

The Glenn-Chafee amendment passes that test. It incorporates all the significant reforms that the Senate adopted in 1982 when we considered, on this floor, S. 1080. That was a splendid piece of legislation. It was acclaimed by all as a thoroughgoing reform. In addition to the provisions of cost-benefit analysis and congressional veto that were included in S. 1080, the Glenn-Chafee amendment has new principles for risk assessment, an agenda to review existing regulations and steps to realign priorities based on risk. It goes well beyond S. 1080.

S. 1080 was adopted on the floor of this Senate 93 to nothing. I suspect the distinguished senior Senator from Louisiana voted for it. He certainly did not vote against it. Maybe he was not present, but he has a good attendance record so I suspect he voted for that bill. It was good enough in 1982.

The Glenn-Chafee amendment would catch poorly drawn or costly rules. Cost-benefit analysis is required of major rules. Courts can enforce this requirement. OMB is to oversee the preparation of these cost-benefit studies. The information on the costs and benefits of each rule will be sent to Congress, lay over there for 60 days before a rule becomes effective. Congress can veto the rule.

From the debate on this issue it appears that Congress may well receive between 500 and 1,000 rules every year under this congressional review process. If even a small minority of the Members of this body want reconsideration of a particular rule, it will be easy enough to ensure that a vote on the resolution occurs.

Now, I am currently serving as chairman of the Environment and Public Works Committee, and I have some concern about the workload that this so-called reform will create, having coming before us between 500 and 1,000 rules every year. But this is real reform. I expect we will be voting on many resolutions and many times will force agencies to reconsider their rules. If a bad rule gets through, we will have no one to blame but ourselves here in Congress; we let it happen. We can stop bad rules under the reform provisions that are contained in the Glenn-Chafee amendment. Once Congress has this veto mechanism in place, judicial review will become less important as a method to weed out bad rules. Courts will be reluctant to overturn a rule that has been issued by the executive branch and cleared in an expedited fashion in Congress.

The Glenn-Chafee amendment will bring significant changes to the regulatory process.

I do not think the underlying Johnston substitute passes the two-part test that Senator GLENN has outlined. I am concerned that it may prevent timely action to protect human health and safety and the environment. I know that is not what the authors intended, but I believe it will have this result.

The reforms are so far-reaching they could paralyze the Federal agencies. That is what Senator LEVIN has been talking about. It is very difficult to issue a significant rule to protect human health or the environment even under the procedures in place today. With the new hurdles erected by the substitute, S. 343, it could well become impossible to get a rule enacted.

Now, Mr. President, last week the senior Senator from Illinois described the experience his State had with cost-benefit analysis. Illinois passed a law in 1978 with cost-benefit provisions similar to those in this Johnston substitute. The Illinois law did not work. It was repealed. Everybody in Illinois that had any experience with their cost-benefit law will tell you it just plain does not work.

You do not have to go to Illinois to learn about the experience with cost-benefit analysis. We had that experience here with the Federal law. We have one environmental law, the Toxic Substances Control Act. This is called TSCA. That contains many of the same procedures that are set forth in the underlying substitute.

So we have been down this road before. Now, Yogi Berra said you can see a lot by looking, and you can see a lot by looking. We can learn a lot from this so-called TSCA experience. The lawyers who wrote this bill that is before us now, the Johnston substitute, must have used this TSCA experience and the TSCA law as a model. TSCA is

a cost-benefit statute. To issue a rule under TSCA, EPA must determine that the benefits of the rule justify the costs.

Under TSCA, EPA is required to impose the least burdensome regulation, just like the Johnston bill does. TSCA requires that all of the available regulatory options be considered to determine which is the least burdensome.

Now, this is an important illustration, Mr. President. We have been down this road before. We have something actually before us that is nearly exactly the same as the Johnston substitute, the so-called Toxic Substances Control Act. How did it work?

EPA, under this TSCA bill, is required to produce substantial evidence in the record to support its rulemaking determination. That is what the Johnston substitute requires.

Now, when it was enacted in 1976, many in Congress claimed that TSCA would become the most powerful of all the environmental statutes. It appears to authorize EPA to regulate virtually any chemical in commerce, for any adverse effect, in any environmental medium, in products and in the workplace. TSCA was to be the law that integrated all our environmental goals under one umbrella.

However, TSCA has been a disaster. EPA has only attempted one major regulatory action since TSCA was passed nearly 20 years ago. EPA worked on that one rule for 10 years. It reviewed hundreds of health studies, spent millions of dollars reviewing the comments and the data from the industries to be regulated. The rule was issued after 10 years, and it was immediately challenged in court under the special judicial review standards that apply to TSCA, which are the same standards that would be imposed on all laws under the Johnston amendment. So we have been down this track. Now, what happens? The rule was overturned by the Fifth Circuit Court of Appeals.

I ask unanimous consent, Mr. President, that the opinion of the court be printed in the RECORD after my comments this morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CHAFEE. The reason the court gave for vacating the rule was the failure of EPA to provide substantial evidence in the record to support its actions. You did not do enough, they said.

The substantial evidence test does not apply to any other environmental laws, only to TSCA, and the only rule ever attempted under TSCA was overturned by the courts because EPA did not meet a test, a test that under the Johnston amendment would apply to all our environmental laws.

Reading the decision, one gets the impression that even if EPA had passed the substantial evidence test, the rule would have been thrown out on other grounds. The court said that EPA had not considered a sufficient number of regulatory alternatives because it only did cost estimates on five options, not all of the possible options. The court said EPA had not satisfied the requirement that it impose the least burdensome option because it had not presented any evidence the least burdensome option was among the five considered.

One could almost conclude that those who drafted the regulatory reform bill before the Senate—in other words, the Johnston substitute—did so with the Fifth Circuit Court's ruling in mind. Every hurdle that has made TSCA a useless law to protect health and environment is rolled up in this bill before us today. It applies across all of our health and our safety and our environmental statutes. No wonder the administration says it will veto the Johnston bill if it passes.

Mr. President, if the Senate will be guided by the two questions Senator GLENN set out—first; will real reform occur; and, second; will environmental laws be protected or will they be undermined—only one of the two proposals before us today passes that muster. The Glenn-Chafee amendment contains a series of steps that will improve the quality and reduce the burden of Federal regulations. It does so without threatening to undermine our environmental and safety laws.

The other bill may be described by Senator JOHNSTON as a tougher reform bill. No doubt more rules will be blocked by that bill. Under that bill, it could well result that Federal regulatory agencies would be brought to a virtual standstill. That is what I am confident will happen if this bill should ever become law, which fortunately has a slim chance of occurring.

But that is not the goal of regulatory reform, to have the whole regulatory process of our Federal Government brought to a halt. I am sure Senator JOHNSTON and proponents of his bill believe setting high standards for regulations will get better rules. But in making the hurdle too high, so high that needed rules, rules that are fully justified by their benefits, can never reach the level of perfection that is demanded, they are blocked by endless rounds of review.

While those on the other side may charge that the Glenn-Chafee amendment achieves only modest improvement in regulations, I fear that the underlying substitute may result in no health and environmental regulations at all. If that is the objective, fine. If the objective is we do not want any rules, and apparently we are going to pass everything in infinite detail in the laws that we pass, that is one thing, but certainly, in my judgment, that is not the best course for our Nation.

I thank the Chair.

EXHIBIT 1

CORROSION PROOF FITTINGS, ET AL., PETITIONERS, *v.* THE ENVIRONMENTAL PROTECTION AGENCY AND WILLIAM K. REILLY, ADMINISTRATOR, RESPONDENTS

No. 89–4596.

United States Court of Appeals, Fifth Circuit, Oct. 18, 1991.

On Motion for Clarification Nov. 15, 1991.

Rehearing Denied Nov. 27, 1991.

Petition was filed for review of final rule promulgated by Environmental Protection Agency (EPA) under Toxic Substances Control Act section prohibiting future manufacture, importation, processing, and distribution of asbestos in almost all products. The Court of Appeals, Jerry E. Smith, Circuit Judge, held that: (1) foreign entities lacked standing under Act to challenge rule; (2) EPA failed to give required notice to public, before conclusion of hearings, that it intended to use ''analogous exposure'' data to calculate expected benefits of product bans; and (3) EPA failed to give adequate weight to statutory language requiring it to promulgate least burdensome, reasonable regulation required to protect environment adequately.

The Environmental Protection Agency (EPA) issued a final rule under section 6 of the Toxic Substances Control Act (TSCA) to prohibit the future manufacture, importation, processing, and distribution of asbestos in almost all products. Petitioners claim that the EPA's rulemaking procedure was flawed and that the rule was not promulgated on the basis of substantial evidence. Certain petitioners and amici curiae contend that the EPA rule is invalid because it conflicts with international trade agreements and may have adverse economic effects on Canada and other foreign countries. Because the EPA failed to muster substantial evidence to support its rule, we remand this matter to the EPA for further consideration in light of this opinion.

I

Facts and Procedural History

Asbestos is a naturally occurring fibrous material that resists fire and most solvents. Its major uses include heat-resistant insulators, cements, building materials, fireproof gloves and clothing, and motor vehicle brake linings. Asbestos is a toxic material, and occupational exposure to asbestos dust can result in mesothelioma, asbestosis, and lung cancer.

The EPA began these proceedings in 1979, when it issued an Advanced Notice of Proposed Rulemaking announcing its intent to explore the use of TSCA ''to reduce the risk to human health posed by exposure to asbestos.'' *See* 54 Fed. Reg. 29,460 (1989). While these proceedings were pending, other agencies continued their regulations of asbestos uses, in particular the Occupational Safety and Health Administration (OSHA), which in 1983 and 1984 involved itself with lowering standards for workplace asbestos exposure.[1]

An EPA-appointed panel reviewed over one hundred studies of asbestos and conducted several public meetings. Based upon its studies and the public comments, the EPA concluded that asbestos is a potential carcinogen at all levels of exposure, regardless of the type of asbestos or the size of the fiber. The EPA concluded in 1986 that exposure to asbestos ''poses an unreasonable risk to human health'' and thus proposed at least four regulatory options for prohibiting or restricting the use of asbestos, including a mixed ban and phase-out of asbestos over ten years; a two-stage ban of asbestos, depending upon product usage; a three-stage ban on all asbestos products leading to a total ban in ten years; and labeling of all products containing asbestos. *Id* at 29,460–61.

Over the next two years, the EPA updated its data, receiving further comments, and allowed cross-examination on the updated documents. In 1989, the EPA issued a final rule prohibiting the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products. Finding that asbestos constituted an unreasonable risk to health and the environment, the EPA promulgated a staged ban of most commercial uses of asbestos. The EPA estimates that this rule will save either 202 or 148 lives, depending upon whether the benefits are discounted, at a cost of approximately $450–800 million, depending upon the price of substitutes. *Id.* at 29,468.

The rule is to take effect in three stages, depending upon the EPA's assessment of how toxic each substance is and how soon adequate substitutes will be available.[2] The rule allows affected persons one more year at each stage to sell existing stocks of prohibited products. The rule also imposes labeling requirements on stage 2 or stage 3 products and allows for exemptions from the rule in certain cases.

Section 19(a) of TSCA, 15 U.S.C. §2618(a), grants interested parties the right to appeal a final rule promulgated under section 6(a) directly to this or any other regional circuit court of appeals. Pursuant to this section, petitioners challenge the EPA's final rule, claiming that the EPA's rulemaking procedure was flawed and that the rule was not promulgated based upon substantial evidence. Some amici curiae also contend that the rule is invalid because it conflicts with international trade agreements and may have adverse economic effects on Canada and other foreign countries. We deal with each of these contentions *seriatim*.

II

Standing

A

Issues Raised Solely by Amici Curiae

[1] The EPA argues that the briefs of two of the amici curiae, Quebec and Canada, should be stricken because they improperly raise arguments not mentioned by any petitioner. To the extent that these briefs raise new issues, such as the EPA's decision not to consider the adverse impacts of the asbestos ban on the development of the economies of third-world countries, we disregard these arguments.[3] At times, however, the briefs raise variations of arguments also raised by petitioners. We thus draw on these briefs where helpful in our consideration of other issues properly brought before this court by the parties.

[2] The EPA also asserts that we cannot consider arguments raised by the two amici that relate to the differences in fiber types, sizes, and manufacturing processes because these differences only are raised by the petitioners within the context of prohibiting specific friction products, such as sheet gaskets and roof coating. This is, however, a role that amici are intended to fill: to bridge gaps in issues initially and properly raised by parties. Because various petitioners urge arguments similar to these, we properly can consider these specific issues articulated in the amici briefs.[4]

B

Standing of Foreign Entities Under TSCA

The EPA also contends that certain foreign petitioners and amici do not have standing to contest the EPA's final rule. In its final rulemaking, the EPA decided to exclude foreign effects from its analysis. Cassiar Mining Corporation, a Canadian mining company that operates an asbestos mine, and the other Canadian petitioners believe that the EPA erred by not considering the effects of the ban on foreign countries and workers.

[3] At issue in this case is a question of prudential standing, which is of less than constitutional dimensions. The touchstone of the analysis, therefore, is the statutory language used by Congress in conferring standing upon the general public. *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975).

[4] Only those who come within the ''zone of interests to be protected or regulated by the statute'' have prudential standing to bring challenges to regulations under the statute at issue.[5] Indeed, when a party's interests are ''inconsistent with the purposes implicit in the statute,'' it can ''reasonably be assumed that Congress [did not] intend[ ] to permit the suit.'' *Clarke*, 479 U.S. at 399, 107 S.Ct. at 757.

The Canadian petitioners believe that Congress, by granting the right of judicial review to ''any person,'' 15 U.S.C.A. §2618(a)(1)(A) (West Supp.1991), meant to confer standing on anyone who could arrange transportation to the courthouse door. The actual language of TSCA, however, belies the broad meaning the petitioners attempt to impart to the act, for the EPA was not required to consider the effects on people or entities outside the United States. TSCA provides a laundry list of factors to consider when promulgating a rule under section 6, including ''the effect [of the rule] on the *national* economy.'' *Id.* §2605(c)(1)(D) (emphasis added). International concerns are conspicuously absent from the statute.

[5] Under the ''zone of interests'' test, we liberally construe Congressional acts to favor a plaintiff's standing to challenge administrative actions. *Warth*, 422 U.S. at 501, 95 S.Ct. at 2206. This is not to say, however, that all plaintiffs affected by a regulation or order have standing to sue; ''[i]n cases where the plaintiff is not itself the subject of the contested regulatory action, the test denies a right of review if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit.'' *Clarke*, 479 U.S. at 399, 107 S.Ct. at 757.

[6] The Canadian petitioners do not have standing to contest the EPA's actions. Nothing in the statute requires the EPA to consider the effects of its actions in areas outside the scope of section 6. TSCA speaks of the necessity of cleaning up the national environment and protecting United States workers but largely is silent concerning the international effects of agency action. Because of this national emphasis, we are reluctant to ascribe international standing rights to foreign workers affected by the loss of economic sales within this country. We note that the Supreme Court, using similar analysis, recently denied standing rights to workers only incidentally affected by a postal regulation. *Air Courier Conference of Am. v. American Postal Workers Union*, — U.S. ——, 111 S.Ct. 913, 112 L.Ed.2d 1125 (1991). Indeed, to ''proceed[] at the behest of interests that coincide only accidentally with [the statutory] goals'' of TSCA actually may work to defeat those goals. *Hazardous Waste Treatment Council*, 861 F.2d at 283. We therefore do not consider the arguments raised by the Canadian petitioners.

[7] Cassiar separately asserts even closer contacts with the United States and believes that its status as a vendor to an American vendee gives it the right to contest administrative decisions that affect the economic well-being of the vendee. Some courts recognize that vendors can stand as third parties in the shoes of their vendees in order to contest administrative decisions.[6]

Even if we were to accept this line of reasoning, however, the result would be unavailing. Cassiar's vendee is an independent entity, fully capable of asserting its own rights. Given the purely national scope of TSCA, Cassiar cannot, bootstrap from its vendee simply because it sells asbestos to an American company. Merely inserting a product into the stream of commerce is not sufficient to confer standing under TSCA. If the rule were otherwise, the concept of standing would lose all meaning, for the only parties who would not have standing would be those who sell nothing in the United States and thus are indifferent to federal government actions. There is no indication that Congress intended to enact so loose a concept of standing, and we do not import that intent into the act today.[7]

Hence, Cassiar does not have prudential standing to bring this claim, because TSCA expressly concerns itself with national economic concerns. Cassiar brings forth no evidence that it actually controls, and does not just deal with, the American vendee. We thus conclude, along the lines of *Moses*, 778 F.2d at 271–72, that parties that Congress specifically did not intend to participate in, or benefit from, an administrative decision have no right to challenge the legitimacy of that decision.

[8] We draw support for our holding from the decision of the EPA to give a similar construction to TSCA. ''It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute.'' *Investment Co. Inst. v. Camp*, 401 U.S. 617, 626–27, 91 S.Ct. 1091, 1097, 28 L.Ed.2d 367 (1971). ''Thus, only where congressional intent is pellucide are we entitled to reject reasonable administrative construction of a statute.'' *National Grain & Feed Ass'n v. OSHA*, 886 F.2d 717, 733 (5th Cir. 1989).

[9] We find the EPA's decision to ignore the international effects of its decision to be a rational construction of the statute. *Chemical Mfrs. Ass'n v. Natural Resources Defense Council*, 470 U.S. 116, 125, 134, 105 S.Ct. 1102, 1107, 1112, 84 L.Ed.2d 90 (1985). Because it is unlikely that these foreign entities were ''intended [by Congress] to be relied upon to challenge agency disregard of the law,'' *Clarke*, 479 U.S. at 399, 107 S.Ct. at 757 (citations omitted), we hold that they are outside the zone of interests encompassed by TSCA and thus lack standing to protest the EPA's rulemaking.[8]

III

Rulemaking Defects

[10–12] The petitioners allege that the EPA's rulemaking procedure was flawed. Specifically, the petitioners contend that the EPA erred by not cross-examining petitioner's witnesses, by not assembling a panel of experts on asbestos disease risks, by designating a hearing officer, rather than an administrative law judge (ALJ), to preside at the hearings on the rule, and by not swearing in witnesses who testified. Petitioners also complain that the EPA did not allow cross-examination of some of its witnesses and did not notify anyone until after the hearings were over that it intended to use ''analogous exposure'' estimates and a substitute pricing assumption to support its rule. Most of these contentions lack merit and are part of the petitioners' ''protest everything'' approach,[9] but we address specifically the two EPA actions of most concern to us, the failure of the EPA to afford cross-examination of its own witnesses and its failure to provide notice of the analogous exposure estimates.

[13] Administrative agencies acting under TSCA are not required to adhere to all of the procedural requirements were might require of an adjudicative body. See 15 U.S.C. §2605(c)(3). In evaluating petitioners' claims, we are guided by our long-held view that an

agency's choices concerning its rulemaking procedures are entitled to great deference, as the agencies are ''best situated to determine how they should allocate their finite resources.'' *Superior Oil Co.* v. *FERC*, 563 F.2d 191, 201 (5th Cir. 1977).

[14] Section 19(c)(1)(B)(ii) of TSCA requires that we hold unlawful any rule promulgated where EPA restrictions on cross-examination ''precluded disclosure of disputed material facts which [were] necessary to a fair determination by the Administrator.'' 15 U.S.C. §2618(c)(1)(B)(ii). In promulgating this rule, the EPA allowed substantial cross-examination of most, but not all, of its witnesses. Considering the importance TSCA accords to cross-examination, the EPA should have afforded interested parties full cross-examination on all of its major witnesses. We are mindful of the length of the asbestos regulatory process in this case, but Congress, in enacting the rules governing the informal hearing process under TSCA, specifically reserved a place for proper cross-examination on issues of disputed material fact. *See id.* §§2605(c)(3), 2618(c)(1)(B)(ii). Precluding cross-examination of EPA witnesses—even a minority of them—is not the proper way to expedite the finish of a lengthy rulemaking procedure.

The EPA's general failure to accord the petitioners adequate cross-examination, however, is not sufficient by itself to mandate overturning the rule. The ''foundational question is whether any procedural flaw so subverts the process of judicial review that invalidation of the regulation is warranted.'' *Superior Oil Co.*, 563 F.2d at 201 (quoting *Alabama Ass'n of Ins. Agents v. Board of Governors of the Fed. Reserve Sys.*, 533 F.2d 224, 236–237 (5th Cir. 1976)). Under this standard, the EPA's denial of cross-examination, by itself, is insufficient to force us to overturn the EPA's asbestos regulation.

[15] We cannot reach the same conclusion in another area, however. The EPA failed to give notice to the public, before the conclusion of the hearings, that it intended to use ''analogous exposure'' data to calculate the expected benefits of certain product bans. In general, the EPA should give notice as to its intended methodology while the public still has an opportunity to analyze, comment, and influence the proceedings. The EPA's use of the analogous exposure estimates, apart from their merits, thus should have been subjected to public scrutiny *before* the record was closed. While it is true that ''[t]he public need not have an opportunity to comment on every bit of information influencing an agency's decision,'' *Texan v. Lyng*, 868 F.2d 795, 799 (5th Cir. 1989), this cannot be used as a defense to the late adoption of the analogous exposure estimates, as they are used to support a substantial part of the regulation finally promulgated by the EPA.[10]

We draw support for this conclusion from *Aqua Slide 'N' Dive v. CPSC*, 569 F.2d 831 (5th Cir.1978), in which the CPSC decided, without granting interested parties the opportunity to comment, that its proposed regulation merely would slow the industry's rate of growth rather than actually cut sales. We rejected the CPSC's rule, and our reasons there are similar to those that require us to reject the EPA's reliance upon the analogous exposure data today:

[T]he evidence on which the Commission relies was only made public after the period for public comment on the standard had closed. Consequently, critics had no realistic chance to rebut it. . . . It matters not that the late submission probably did not violate the notice requirement of 5 U.S.C.A. §553. . . . *The statute requires that the Commission's findings be supported by substantial evidence, and that requirement is not met when the only evidence on a crucial finding is alleged to be unreliable and the Commission has not exposed it to the full scrutiny which would encourage confidence in its accuracy.*

Id. at 842–43 (citations omitted) (emphasis added).

In short, the EPA should not hold critical analysis in reserve and then use it to justify its regulation despite the lack of public comment on the validity of its basis. Failure to seek public comment on such an important part of the EPA's analysis deprived its rule of the substantial evidence required to survive judicial scrutiny, as in *Aqua Slide*.

[16] We reach this conclusion despite the relatively lenient standard by which we judge administrative rulemaking proceedings. E.g., *Superior Oil Co.*, 563 F.2d at 201. The EPA seeks to avert this result by contending that the petitioners had constructive notice that the EPA might adopt the analogous exposure theory because it included, among its published data, certain information that might be manipulated to support such an analysis. We hold, however, that considering that for some products the analogous exposure estimates constituted the bulk of the EPA's analysis, constructive notice was insufficient notice.[11] In summary, on an issue of this import, the EPA should have announced during the years in which the hearings were ongoing, rather than in the subsequent weeks after which they were closed, that it intended to use the analogous exposure estimates. On reconsideration, the EPA should open to public comment the validity of its analogous exposure estimates and methodology.

IV

The Language of TSCA

A

Standard of Review

Our inquiry into the legitimacy of the EPA rulemaking begins with a discussion of the standard of review governing this case. EPA's phase-out ban of most commercial uses of asbestos is a TSCA §6(a) rulemaking. TSCA provides that a reviewing court ''shall hold unlawful and set aside'' a final rule promulgated under §6(a) ''if the court finds that the rule is not supported by substantial evidence in the rulemaking record . . . taken as a whole.'' 15 U.S.C. §2618(c)(1)(B)(i).

[17] Substantial evidence requires ''something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.'' *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, 86 S.Ct. 1018, 1026, 16 L.Ed.2d 131 (1966). This standard requires (1) that the agency's decision be based upon the entire record,[12] taking into account whatever in the record detracts from the weight of the agency's decision; and (2) that the agency's decision be what '' 'a reasonable mind might accept as adequate to support [its] conclusion.' '' *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 522, 101 S.Ct. 2478, 2497, 69 L.Ed.2d 185 (1981) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477, 71 S.Ct. 456, 459, 95 L.Ed. 456 (1951)). Thus, even if there is enough evidence in the record to support the petitioners; assertions, we will not reverse if there is substantial evidence to support the agency's decision. *See, e.g., Villa v. Sullivan*, 895 F.2d 1019, 1021–22 (5th Cir. 1990); *Singletary v. Bowen*, 798 F.2d 818, 822–23 (5th Cir.1986); *accord Fort Valley State College v. Bennett*, 853 F.2d 862, 864 (11th Cir. 1988) (reviewing court examines the entire record but defers to the agency's choice between two conflicting views).

[18, 19] Contrary to the EPA's assertions, the arbitrary and capricious standard found in the APA and the substantial evidence standard found in TSCA are different standards, even in the context of an informal rulemaking.[13] Congress specifically went out of its way to provide that ''the standard of review prescribed by paragraph (2)(E) of section 706 [of the APA] shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record . . . taken as a whole.'' 15 U.S.C. §2618(c)(1)(B)(i). ''The substantial evidence standard mandated by [TSCA] is generally considered to be more rigorous than the arbitrary and capricious standard normally applied to informal rulemaking,'' *Environmental Defense Funds v. EPA*, 636 F.2d 1267, 1277 (D.C.Cir.1980), and ''afford[s] a considerably more generous judicial review'' than the arbitrary and capricious test. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 143, 87 S.Ct. 1507, 1512, 18 L.Ed.2d 681 (1967), *overruled on other grounds*, *Califano v. Sanders*, 430 U.S. 99, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977). The test ''imposes a considerable burden on the agency and limits its discretion in arriving at a factual predicate.'' *Mobile Oil Corp. v. FPC*, 483 F.2d 1238, 1258 (D.C.Cir.1973).

[20] ''Under the substantial evidence standard, a reviewing court must give careful scrutiny to agency findings and, at the same time, accord appropriate deference to administrative decisions that are based on agency experience and expertise.'' *Environmental Defense Fund*, 636 F.2d at 1277. As with consumer product legislation, ''Congress put the substantial evidence test in the statute because it wanted the courts to scrutinize the Commission's actions more closely than an 'arbitrary and capricious' standard would allow.'' *Aqua Slide*, 569 F.2d at 837.

[21, 22] The recent case of *Chemical Mfrs. Ass'n v. EPA*, 899 F.2d 344 (5thCir.1990), provides our basic framework for reviewing the EPA's actions. In evaluating whether the EPA has presented substantial evidence, we examine (1) whether the quantities of the regulated chemical entering into the environment are ''substantial'' and (2) whether human exposure to the chemical is ''substantial'' or ''significant.'' *Id.* at 359. An agency may exercise its judgment without strictly relying upon quantifiable risks, costs, and benefits, but it must ''cogently explain why it has exercised its discretion in a given manner'' and ''must offer a 'rational connection between the facts found and the choice made.' '' *Id.* (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)).

[23,24] We note that in undertaking our review, we give all agency rules a presumption of validity, and it is up to the challenger to any rule to show that the agency action is invalid. *Alabama Nursing Home Ass'n v. Harris*, 617 F.2d 388, 393–94 (5th Cir. 1980). The burden remains on the EPA, however, to justify that the products it bans present an unreasonable risk, no matter how regulated. *See Industrial Union Dep't v. American Petroleum Inst.*, 448 U.S. 607, 662, 100 S.Ct. 2844, 2874, 65 L.Ed.2d 1010 (1980); *cf. National Lime Ass'n v. EPA*, 627 F.2d 416, 433 (D.C.Cir. 1980) (''an initial burden of promulgating and explaining a non-arbitrary, non-capricious rule rests with the Agency''). Finally, as we discuss in detail *infra*, because TSCA instructs the EPA to undertake the least burdensome regulation sufficient to regulate the substance at issue, the agency bears a heavier burden when it seeks a partial or total ban of a substance than when it merely seeks to regulate that product. *See* 15 U.S.C. §2605(a).

B

The EPA's Burden Under TSCA

TSCA provides, in pertinent part, as follows:

(a) Scope of regulation.—If the Administrator finds that there is a *reasonable basis* to

conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an *unreasonable risk of injury* to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to *protect adequately* against such risk using the *least burdensome* requirements. *Id.* (emphasis added). As the highlighted language shows, Congress did not enact TSCA as a zero-risk statute.[14] The EPA, rather, was required to consider both alternatives to a ban and the costs of any proposed actions and to ''carry out this chapter in a reasonable and prudent manner [after considering] the environmental, economic and social impact of any action.'' 15 U.S.C. §2601(c).

[25] We conclude that the EPA has presented insufficient evidence to justify its asbestos ban. We base this conclusion upon two grounds: the failure of the EPA to consider all necessary evidence and its failure to give adequate weight to statutory language requiring it to promulgate the least burdensome, reasonable regulation required to protect the environment adequately. Because the EPA failed to address these concerns, and because the EPA is required to articulate a ''reasoned basis'' for its rules, we are compelled to return the regulation to the agency for reconsideration.

1. Least Burdensome and Reasonable.

[26] TSCA requires that the EPA use the least burdensome regulation to achieve its goal of minimum reasonable risk. This statutory requirement can create problems in evaluating just what is a ''reasonable risk.'' Congress's rejection of a no-risk policy, however, also means that in certain cases, the least burdensome yet still adequate solution may entail somewhat more risk than would other, known regulations that are far more burdensome on the industry and the economy. The very language of TSCA requires that the EPA once it has determined what an acceptable level of non-zero risk is, chose the least burdensome method of reaching that level.

In this case, the EPA banned, for all practical purposes, all present and future use of asbestos—a position the petitioners characterize as the ''death penalty alternative,'' as this is the *most* burdensome of all possible alternatives listed as open to the EPA under TSCA. TSCA not only provides the EPA with a list of alternative actions but also provides those alternatives in order of how burdensome they are.[15] The regulations thus provide for EPA regulation ranging from labeling the least toxic chemicals an industry may use. Total bans head the list as the most burdensome regulatory option.

By choosing the harshest remedy given to it under TSCA, the EPA assigned to itself the toughest burden in satisfying TSCA's requirement that its alternative be the least burdensome of all those offered to it. Since, both by definition and by the terms of TSCA, the complete ban of manufacturing is the most burdensome alternative—for even stringent regulation at least allows a manufacturer the chance to invest and meet the new, higher standard—the EPA's regulation cannot stand if there is any other regulation that would achieve an acceptable level of risk as mandated by TSCA.

We reserve until a later part of the opinion a product-by-product review of the regulation. Before reaching this analysis, however, we lay down the inquiry that the EPA should undertake whenever it seeks total ban of a product.

The EPA considered, and rejected, such options as labeling asbestos products, thereby warning users and workers involved in the manufacture of asbestos-containing products of the chemical's dangers, and stricter workplace rules. EPA also rejected controlled use of asbestos in the workplace and deferral to other government agencies charged with worker and consumer exposure to industrial and product hazards, such as OSHA, the CPSC, and the MSHA. The EPA determined that deferral to these other agencies was inappropriate because no one other authority could address all the risks posed ''throughout the life cycle'' by asbestos, and any action by one or more of the other agencies still would leave an unacceptable residual risk.[16]

Much of the EPA's analysis is correct, and the EPA's basic decision to use TSCA as a comprehensive statute designed to fight a multi-industry problem was a proper one that we uphold today on review. What concerns us, however, is the manner in which the EPA conducted some of its analysis. TSCA requires the EPA to consider, along with the effects of toxic substances on human health and the environment, ''the benefits of such substance[s] or mixture[s] for various uses and the availability of substitutes for such uses,'' as well as ''the reasonably ascertainable economic consequences of the rule, after consideration for the effect on the national economy, small business, technological innovation, the environment, and public health.'' *Id.* §2605(c)(1)(C–D).

The EPA presented two comparisons in the record: a world with no further regulation under TSCA, and a world in which no manufacture of asbestos takes place. The EPA rejected calculating how many lives a less burdensome regulation would save, and at what cost. Furthermore the EPA, when calculating the benefits of its ban, explicitly refused to compare it to an improved workplace in which currently available control technology is utilized. *See* 54 Fed.Reg. at 29,474. This decision artificially inflated the purported benefits of the rule by using a baseline comparison substantially lower than what currently available technology could yield.

[27] Under TSCA, the EPA was required to evaluate, rather than ignore, less burdensome regulatory alternatives. TSCA imposes a least-to-most-burdensome hierarchy. In order to impose a regulation at the top of the hierarchy—a total ban of asbestos—the EPA must show not only that its proposed action reduces the risk of the product to an adequate level, but also that the actions Congress identified as less burdensome also would not do the job.[17] The failure of the EPA to do this constitutes a failure to meet its burden of showing that its actions not only reduce the risk but do so in the Congressionally-mandated *least burdensome* fashion.

Thus it was not enough for the EPA to show, as it did in this case, that banning some asbestos products might reduce the harm that could occur from the use of these products. If that were the standard, it would be no standard at all, for few indeed are the products that are so safe that a complete ban of them would not make the world still safer.

This comparison of two static worlds is insufficient to satisfy the dictates of TSCA. While the EPA may have shown that a world with a complete ban of asbestos might be preferable to one in which there is only the current amount of regulation, the EPA has failed to show that there is not some intermediate state of regulation that would be superior to both the currently-regulated and the completely-banned world. Without showing that asbestos regulation would be ineffective, the EPA cannot discharge its TSCA burden of showing that its regulation is the least burdensome available to it.

Upon an initial showing of product danger, the proper course for the EPA to follow is to consider each regulatory option, beginning with the least burdensome, and the costs and benefits of regulation under each option. The EPA cannot simply skip several rungs, as it did in this case, for in doing so, it may skip a less-burdensome alternative mandated by TSCA. Here, although the EPA mentions the problems posed by intermediate levels of regulation, it takes no steps to calculate the costs and benefits of these intermediate levels. *See* 54 Fed.Reg. at 29,462, 29,474. Without doing this it is impossible, both for the EPA and for this court on review, to know that none of these alternatives was less burdensome than the ban in fact chosen by the agency.

The EPA's offhand rejection of these intermediate regulatory steps is ''not the stuff of which substantial evidence is made.'' *Aqua Slide*, 569 F.2d at 843. While it is true that the EPA considered five different ban options, these differed solely with respect to their effective dates. The EPA did not calculate the risk levels for intermediate levels of regulation, as it believed that there was no asbestos exposure level for which the risk of injury or death was zero. Reducing risk to zero, however, was not the task that Congress set for the EPA in enacting TSCA. The EPA thus has failed ''cogently [to] explain why it has exercised its discretion in a given manner,'' *Chemical Mfrs. Ass'n*, 899 F.2d at 349, by failing to explore in more than a cursory way the less burdensome alternatives to a total ban.

2. The EPA's Calculations.

Furthmore, we are concerned about some of the methodology employed by the EPA in making various of the calculations that it did perform. In order to aid the EPA's reconsideration of this and other cases, we present our concerns here.

[28] First, we note that there was some dispute in the record regarding the appropriateness of discounting the perceived benefits of the EPA's rule. In choosing between the calculated costs and benefits, the EPA presented variations in which it discounted only the costs, and counter-variations in which it discounted about the costs and the benefits, measured in both monetary and human injury terms. As between these two variations, we choose to evaluate the EPA's work using its discounted benefits calculations.

Although various commentators dispute whether it ever is appropriate to discount benefits when they are measured in human lives, we note that it would skew the results to discount only costs without according similar treatment to the benefits side of the equation. Adopting the position of the commentators who advocate not discounting benefits would force the EPA similarly not to calculate costs in present discounted real terms, making comparisons difficult. Furthermore, in evaluating situations in which different options incur costs at varying time intervals, the EPA would not be able to take into account that soon-to-be incurred costs are more harmful than postponable costs. Because the EPA must discount costs to perform its evaluations properly, the EPA also should discount benefits to preserve an apples-to-apples comparison, even if this entails discounting benefits of a non-monetary nature. *See What Price Posterity?*, The Economist, March 23, 1991, at 73 (explaining use of discount rates for non-monetary goods).

When the EPA does discount costs of benefits, however, it cannot choose an unreasonable time upon which to base its discount calculation. Instead of using the time of injury as the appropriate time from which to discount, as one might expect, the EPA instead used the time of exposure.

The difficulties inherent in the EPA's approach can be illustrated by an example. Suppose two workers will be exposed to asbestos in 1995, with worker *X* subjected to a tiny amount of asbestos that will have no adverse health effects, and worker *Y* exposed to massive amounts of asbestos that quickly will lead to an asbestos-related disease. Under the EPA's approach, which takes into account only the time of exposure rather than the time at which any injury manifests itself, both examples would be treated the same. The EPA's approach implicitly assumes that the day on which the risk of injury occurs is the same day the injury actually occurs.[18] Such an approach might be proper when the exposure and injury are one and the same, such as when a person is exposed to an immediately fatal poison, but is inappropiate for discounting toxins in which exposure often is followed by a substantial lag time before manifestation of injuries.[19]

Of more concern to us is the failure of the EPA to compute the costs and benefits of its proposed rule past the year 2000, and its double-counting of the costs of asbestos use. In performing its calculus, the EPA only included the number of lives saved over the next thirteen years, and counted any additional lives saved as simply ''unquantified benefits.'' 54 Fed. Reg. at 29,486. The EPA and intervenors now seek to use these unquantified lives saved to justify calculations as to which the benefits seem far outweighed by the astronomical costs. For example, the EPA plans to save about three lives with its ban of asbestos pipe, at a cost of $128–227 million (*i.e.*, approximately $43–76 million per life saved). Although the EPA admits that the lives saved past the year 2000 justify the price. *See generally id.* at 29,473 (explaining use of unquantified benefits).

Such calculations not only lessen the value of the EPA's cost analysis, but also make any meaningful judicial review impossible. While TSCA contemplates a useful place for unquantified benefits beyond the EPA's calculation, unquantified benefits never were intended as a trump card allowing the EPA to justify any cost calculus, no matter how high.

The concept of unquantified benefits, rather, is intended to allow the EPA to provide a rightful place for any remaining benefits that are impossible to quantify after the EPA's best attempt, but which still are of some concern. But the allowance for unquantified costs is not intended to allow the EPA to perform its calculations over an arbitrarily short period so as to preserve a large unquantified portion.

Unquantified benefits can, at times, permissibly tip the balance in close cases. They cannot, however, be used to effect a wholesale shift on the balance beam. Such a use makes a mockery of the requirements of TSCA that the EPA weigh the costs of its actions before it chooses the least burdensome alternative.[20]

[29] Most problematical to us is the EPA's ban of products for which no substitutes presently are available. In these cases, the EPA bears a tough burden indeed to show that under TSCA a ban is the least burdensome alternative, as TSCA explicitly instructs the EPA to consider ''the benefits of such substance or mixture for various uses and the availability of substitutes for such uses.'' *Id.* §2605(c)(1)(C). These words are particularly appropriate where the EPA actually has decided to ban a product, rather than simply restrict is use, for it is in these cases that the lack of an adequate substitute is most troubling under TSCA.

As the EPA itself states, ''[w]hen no information is available for a product indicating that cost-effective substitutes exist, the estimated cost of a product ban is very high.'' 54 Fed.Reg. at 29,468. Because of this, the EPA did not ban certain uses of asbestos, such as its use in rocket engines and battery separators. The EPA, however, in several other instances, ignores its own arguments and attempts to justify its ban by stating that the ban itself will cause the development of low-cost, adequate substitute products.

[30] As a general matter, we agree with the EPA that a product ban can lead to great innovation, and it is true that an agency under TSCA, as under other regulatory statutes, ''is empowered to issue safety standards which require improvements in existing technology or which require the development of new technology.'' *Chrysler Corp. v. Department of Transp.*, 472 F.2d 659, 673 (6th Cit.1972). As even the EPA acknowledges, however, when no adequate substitutes currently exist, the EPA cannot fail to consider this lack when formulating its own guidelines. Under TSCA, therefore, the EPA must present a stronger case to justify the ban, as opposed to regulation, of products with no substitutes.

We note that the EPA does provide a waiver provision for industries where the hoped-for substitutes fail to materialize in time. *See* 54 Fed. Reg. at 29,464. Under this provision, if no adequate substitutes develop, the EPA temporarily may extend the planned phase-out.

The EPA uses this provision to argue that it can ban any product, regardless of whether it has an adequate substitute, because inventive companies soon will develop good substitutes. The EPA contends that if they do not, the waiver provision will allow the continued use of asbestos in these areas, just as if the ban had not occurred at all.

The EPA errs, however, in asserting that the waiver provision will allow a continuation of the status quo in those cases in which no substitutes materialize. By its own terms, the exemption shifts the burden onto the waiver proponent to convince the EPA that the waiver is justified. *See id.* As even the EPA acknowledges, the wavier only ''may be granted by [the] EPA in very limited circumstances.'' *Id.* at 29,460.

The EPA thus cannot use the waiver provision to lessen its burden when justifying banning products without existing substitutes. While TSCA gives the EPA the power to ban such products, the EPA must bear its heavier burden of justifying its total ban in the face of inadequate substitutes. Thus, the agency cannot use its waiver provision to argue that the ban of products with no substitutes should be treated the same as the ban of those for which adequate substitutes are available now.

[31] We also are concerned with the EPA's evaluation of substitutes even in those instances in which the record shows that they are available. The EPA explicitly rejects considering the harm that may flow from the increased use of products designed to substitute for asbestos, even where the probable substitutes themselves are known carcinogens. *Id.* at 29,481–83. The EPA justifies this by stating that it has ''more concern about the continued use and exposure to asbestos than it has for the future replacement of asbestos in the products subject to this rule with other fibrous substitutes.'' *Id.* at 29,481. The agency thus concludes that any ''[r]egulatory decisions about asbestos which poses well-recognized, serious risks should not be delayed until the risk of all replacement materials are fully quantified.'' *Id.* at 29,483.

This presents two problems. First, TSCA instructs the EPA to consider the relative merits of its ban, as compared to the economic effects of its actions. The EPA cannot make this calculation if it fails to consider the effects that alternate substitutes will pose after a ban.

Second, the EPA cannot say with any assurance that its regulation will increase workplace safety when it refuses to evaluate the harm that will result from the increased use of substitute products. While the EPA may be correct in its conclusion that the alternate materials pose less risk than asbestos, we cannot say with any more assurance than that flowing from an educated guess that this conclusion is true.

Considering that many of the substitutes that the EPA itself concedes will be used in the place of asbestos have known carcinogenic effects, the EPA not only cannot assure this court that it has taken the least burdensome alternative, but cannot even prove that its regulations will increase workplace safety. Eager to douse the dangers of asbestos, the agency inadvertently actually may increase the risk of injury Americans face. The EPA's explicit failure to consider the toxicity of likely substitutes thus deprives its order of a reasonable basis. *Cf. American Petroleum Inst. v. OSHA*, 581 F. 2d 493, 504 (5th Cir. 1978) (An agency is required to ''regulate on the basis of knowledge rather than the unknown.'').

Our opinion should not be construed to state that the EPA has an affirmative duty to seek out and test every workplace substitute for any product it seeks to regulate. TSCA does not place such a burden upon the agency. We do not think it unreasonable, however, once interested parties introduce credible studies and evidence showing the toxicity of workplace substitutes, or the decreased effectiveness of safety alternatives such as non-asbestos brakes, that the EPA then consider whether its regulations are even increasing workplace safety, and whether the increased risk occasioned by dangerous substitutes makes the proposed regulation no longer reasonable. In the words of the EPA's own release that initiated the asbestos rulemaking, we direct that the agency consider the adverse health effects of asbestos substitute ''for comparison with the known hazards of asbestos,'' so that it can conduct, as it promised in 1979, a ''balanced consideration of the environmental, economic, and social impact of any action taken by the agency.'' 44 Fed. Reg. at 60,065 (1979).

[32] In short, a death is a death, whether occasioned by asbestos or by a toxic substitute product, and the EPA's decision not to evaluate the toxicity of known carcinogenic substitutes is not a reasonable action under TSCA. Once an interested party brings forth credible evidence suggesting the toxicity of the probable or only alternatives to a substance, the EPA must consider the comparative toxic costs of each.[21] Its failure to do so in this case thus deprived its regulation of a reasonable basis, at least in regard to those products as to which petitioners introduced credible evidence of the dangers of the likely substitutes.[22]

4. Unreasonable Risk of Injury.

The final requirement the EPA must satisfy before engaging in any TSCA rulemaking is that it only take steps designed to prevent ''unreasonable'' risks. In evaluating what is ''unreasonable,'' the EPA is required to consider the costs of any proposed actions and to ''carry out this chapter in a reasonable and prudent manner [after considering] the environmental, economic, and social impact of any action.'' 15 U.S.C. §2601(c).

[33] As the District of Columbia Circuit stated when evaluating similar language governing the Federal Hazardous Substances Act, ''[t]he requirement that the risk be 'unreasonable' necessarily involves a balancing test like that familiar in tort law: The regulation may issue if the severity of the injury

that may result from the product, factored by the likelihood of the injury, offsets the harm the regulation itself imposes upon manufacturers and consumers,'' *Forester v. CPSC,* 559 F.2d 774, 789 (D.C.Cir. 1977). We have quoted this language approvingly when evaluating other statutes using similar language. *See, e.g., Aqua Slide,* 569 F.2d at 839.

That the EPA must balance the costs of its regulations against their benefits further is reinforced by the requirement that it seek the least burdensome regulation. While Congress did not dictate that the EPA engage in an exhaustive, full-scale cost-benefit analysis, it did require the EPA to consider both sides of the regulatory equation, and it rejected the notion that the EPA should pursue the reduction of workplace risk at any cost. *See American Textile Mfrs. Inst.,* 452 U.S. at 510 n. 30, 101 S.Ct. at 2491 n. 30 (''unreasonable risk'' statutes require ''a generalized balancing of costs and benefits'' (citing *Aqua Slide,* 569 F.2d at 839)). Thus, ''Congress also plainly intended the EPA to consider the economic impact of *any* actions taken by it under . . . TSCA.'' *Chemical Mfrs. Ass'n* 899 F.2d at 348.

Even taking all of the EPA's figures as true, and evaluating them in the light most favorable to the agency's decision (non-discounted benefits, discounted costs, analogous exposure estimates included), the agency's analysis results in figures as high as $74 million per life saved. For example, the EPA states that its ban of asbestos pipe will save three lives over the next thirteen years, at a cost of $128–227 million ($43–76 million per life saved), depending upon the price of substitutes; that it ban of asbestos shingles will cost $23–34 million to save 0.32 statistical lives ($72–106 million per life saved); that its ban of asbestos coatings will cost $46–181 million to save 3.33 lives ($14–54 million per life saved); and that its ban of asbestos paper products will save 0.60 lives at a cost of $4–5 million ($7–8 million per life saved). *See* Fed. Reg. at 29,484–85. Were the analogous exposure estimates not included, the cancer risks from substitutes such as ductile iron pipe factored in, and the benefits of the ban appropriately discounted from the time of the manifestation of an injury rather than the time of exposure, the costs would shift even more sharply against the EPA's position.

While we do not sit as a regulatory agency that must make the difficult decision as to what an appropriate expenditure is to prevent someone from incurring the risk of an asbestos-related death, we do note that the EPA, in its zeal to ban any and all asbestos products, basically ignored the cost side of the TSCA equation. The EPA would have this court believe that Congress, when it enacted its requirement that the EPA consider the economic impacts of its regulations, thought that spending $200–300 million to save approximately seven lives (approximately $30–40 million per life) over thirteen years is reasonable.

As we stated in the OSHA context, until an agency ''can provide substantial evidence that the benefits to be achieved by [a regulation] bear a reasonable relationship to the costs imposed by the reduction, it cannot show that the standard is reasonably necessary to provide safe or healthful workplaces.'' *American Petroleum Inst.,* 581 F.2d at 504. Although the OSHA statute differs in major respects from TSCA, the statute does require substantial evidence to support the EPA's contentions that its regulations both have a reasonable basis and are the least burdensome means to a reasonably safe workplace.

The EPA's willingness to argue that spending $23.7 million to save less than one-third of a life reveals that its economic review of its regulations, as required by TSCA, was meaningless. As the petitioners' brief and our review of EPA caselaw reveals, such high costs are rarely, if ever, used to support a safety regulation. If we were to allow such cavalier treatment of the EPA's duty to consider the economic effects of its decisions, we would have to excise entire sections and phrases from the language of TSCA. Because we are judges, not surgeons, we decline to do so.[23]

V

Substantial Evidence Regarding Least Burdensome, Adequate Regulation

TSCA provides that a reviewing court ''shall hold unlawful and set aside'' a final rule promulgated under section 6(a) ''if the court finds that the rule is not supported by substantial evidence in the rulemaking record . . . taken as a whole.'' 15 U.S.C. § 2618(c)(1)(B)(i). The substantial evidence standard ''afford[s] a considerably more generous judicial review'' than the arbitrary or capricious test, *Abbott Laboratories,* 387 U.S. at 143, 87 S.Ct. at 1513, and ''imposes a considerable burden on the agency and limits its discretion in arriving at a factual predicate.'' *Mobil Oil Corp.* v. *FPC, 483 F.2d 1238, 1258 (D.C.Cir.1973).*

[34] We have declared that the EPA must articulate an ''understandable basis'' to support its TSCA action with respect to each substance or application of the substance banned. *Chemical Mfrs. Ass'n,* 899 F.2d at 357. To make a finding of unreasonable risk based upon this assessment, the ''EPA must balance the probability that harm will occur from the activities against the effects of the proposed regulatory action on the availability to society of the benefits of asbestos.'' 54 Fed.Reg. at 29, 467. With these edicts in mind, we now examine each product against the TSCA criteria.[24]

A

Friction Products

[35] We begin our analysis with the EPA's ban of friction products, which constitutes the lion's share of the proposed benefits of the asbestos regulation—nearly three-fourths of the anticipated asbestos deaths. The friction products in question, although primarily made up of drum and disk brakes, also include brake blocks and other friction products.

Workers are exposed to asbestos during the manufacture, use, repair, and disposal of these products. The EPA banned most of these products with a stage 2 ban, which would require companies to cease manufacturing or importing the products by August 25, 1993, with distribution to end one year later. The final stage 3 ban would ban any remaining friction products on August 26, 1996, with distribution again ceasing one year later. *See id.* at 29,461–62.

We note that of all the asbestos bans, the EPA did the most impressive job in this area, both in conducting its studies and in supporting its contention that banning asbestos products would save over 102 discounted lives. *Id.* at 29,485. Furthermore, the EPA demonstrates that the population exposure to asbestos in this area is great, while the estimated cost of the measure is low, at least in comparison to the cost-per-life of its other bans. Were the petitioners only questioning the EPA's decision to ban friction products based upon disputing these figures, we would be tempted to uphold the EPA, even in the fact of petitioner's arguments that workplace exposure to friction product asbestos could be decreased by as much as ninety percent using stricter workplace controls and in light of studies supporting the conclusion that some forms of asbestos present less danger. Decisions such as these are better left to the agency's expertise.

Such expertise, however, is not a universal talisman affording the EPA unbridled latitude to act as it chooses under TSCA. What we cannot ignore is that the EPA failed to study the effect of non-asbestos brakes on automotive safety, despite credible evidence that non-asbestos brakes could increase significantly the number of highway fatalities, and that the EPA failed to evaluate the toxicity of likely brake substitutes. As we already mentioned, the EPA, in its zeal to ban asbestos, cannot overlook, with only cursory study, credible contentions that substitute products actually might increase fatalities.

The EPA commissioned an American Society of Mechanical Engineers (ASME) study that concluded that while more research was needed, it appeared that many of the proposed substitutes for friction products are not, and will not soon be available, especially in the replacement brake market, and that the substitutes may or may not assure safety.[25] Despite this credible record evidence, by a study specifically commissioned by the EPA, that substitute products actually might cause more deaths than those asbestos deaths predicted by the EPA, the agency did not evaluate the dangers posed by the substitutes, including cancer deaths from the others fibers used and highway deaths occasioned by less effective, non-asbestos brakes. This failure to examine the likely consequence of the EPA's regulation renders the ban of asbestos friction products unreasonable.

This failure would be of little moment, were the relevant market confined to original equipment disk brakes and pads. For these original equipment brakes, it appears that manufacturers already have developed safe substitutes for asbestos, considering that nearly all new vehicles come with non-asbestos disk brakes, with non-asbestos drum brakes apparently soon to follow. *See id.* at 29,493. The ASME Report concluded that ''at the present rate of technological progress, most new passenger cars could be equipped with totally non-asbestos frictional systems by 1991, and most light trucks and heavy trucks with S-cam brakes, by 1992.'' *See id.* at 29,494.

Although the petitioners dispute the evidence, we find particularly telling the fact that manufacturers already are producing most vehicles with newly designed, non-asbestos brakes. The ban of asbestos brakes for these uses here appears reasonable and, had the EPA taken the proper steps to consider and reject the less burdensome alternatives, we might find the ban of these products supported by substantial evidence.

With respect to the aftermarket replacement market, however, the EPA's failure to consider the safety ramifications of its decisions is problematic. Original equipment, non-asbestos brakes are designed from the start to work without the superior insulating properties of asbestos. The replacement market brakes, on the other hand, were designed with asbestos, rather than substitutes, in mind. As the EPA itself states, ''[c]ommenters generally agreed that it is easier to develop replace ment asbestos-free friction materials for use in vehicles that are intentionally designed to use such materials that it is to develop asbestos-free friction materials for use as after-market replacement products in vehicles currently in use that have brake systems designed to use asbestos.'' *Id.* Because of these difficulties, the EPA decided to use a stage 3 ban for replacement brakes.

Despite acknowledging the difficulty of retrofitting current asbestos brakes, however, the EPA decided that the problem with non-asbestos brakes was not that they are inferior, but that they are less safe because the government does not regulate them.

Based upon this conclusion, the EPA decided that is need not consider the safety of alternative brakes because, after consultation with the National Highway Traffic Safety Administration, (NNTSA), the EPA concluded that regulation of non-asbestos brakes soon would be forthcoming. *Id.*

This determination is insufficient to discharge the EPA's duties under TSCA. The EPA failed to settle whether alternative brakes will be as safe as current brakes, even though, by its own admission, the ''EPA also acknowledges that a ban on asbestos in the brake friction product categories may increase the uncertainty about brake performance.'' *Id.* at 29,495. The EPA contends that it can rely upon NHTSA to discharge its regulatory burdens, but it ignores the fact that the problem with non-asbestos brakes may be technical, rather than regulatory, in nature.

Future consideration by the NHTSA cannot support a present ban by the EPA when the record contains conflicting and non-conclusive evidence regarding the safety of non-asbestos brake replacement parts. After being presented with credible evidence ''that a ban on asbestos use in the aftermarket for brake systems designed for asbestos friction products will compromise the performance of braking systems designed for asbestos brakes,'' *id.* at 29,494, the EPA under TSCA had to consider whether its proposed ban not only was reasonable, but also whether the increased deaths caused by less efficient brakes made the ban of asbestos in the replacement brake market unreasonable.

In short, while it is apparent that non-asbestos brake products either are available or soon will be available on new vehicles, there is no evidence indicating that forcing consumers to replace their asbestos brakes with new non-asbestos brakes as they wear out on their present vehicles will decrease fatalities or that such a ban will produce other benefits that outweigh its costs. Furthermore, many of the EPA's own witnesses conceded on cross-examination that the non-asbestos fibrous substitutes also pose a cancer risk upon inhalation, yet the EPA failed to examine in more than a cursory fashion the toxicity of these alternatives. Under these circumstances, the EPA has failed to support its ban with the substantial evidence needed to provide it with a reasonable basis.

Finally, as we already have noted, the structure of TSCA requires the EPA to consider, and reject, the less burdensome alternatives in the TSCA hierarchy before it can invoke its power to ban a product completely. It may well be true, as the EPA contends, that workplace controls are insufficient measures under TSCA and that only a ban will discharge the EPA's TSCA-imposed duty to seek the safest, reasonable environment. The EPA's failure to consider the regulatory alternatives, however, cannot be substantiated by conclusory statements that regulation would be insufficient. *See Texas Indep. Ginners Ass'n v. Marshall*, 630 F.2d 398, 411–12 (5th Cir. 1980); *Aqua Slide*, 569 F.2d at 843. We thus concede that while the EPA may have presented sufficient evidence to underpin the dangers of asbestos brakes, its failure to consider whether the ban is the least burdensome alternative, and its refusal to consider the toxicity and danger of substitute brake products, in regard to both highway and workplace safety, deprived its regulation of the reasonable basis required by TSCA.

B

Asbestos-Cement Pipe Products

[36] The EPA's analysis supporting its ban of asbestos-cement (''A/C'') pipe is more troublesome than its action in regard to friction products. Asbestos pipe primarily is used to convey water in mains, sewage under pressure, and materials in various industrial process lines. Unlike most uses of asbestos, asbestos pipe is valued primarily for its strength and resistance to corrosion, rather than for its heat-resistant qualities. The EPA imposed a stage 3 ban on asbestos pipe. 54 Fed. Reg. at 29,462.

Petitioners question EPA's cost/benefit balancing, noting that by the EPA's own predictions, the ban of asbestos pipe will save only 3–4 discounted lives, at a cost ranging from $128–227 million ($43–76 million per life saved), depending upon the price of substitutes. *Id.* at 29,484. Furthermore, much of EPA's data regarding this product and others depends upon data received from exposures observed during activities similar to the ones to be regulated—the ''analogous exposure'' analysis that the EPA adopted subsequent to the public comment period, which thus was not subjected to cross-examination or other critical testing.[26] Finally, the petitioners protest that the EPA acted unreasonably because the most likely substitutes for the asbestos pipe, PVC and ductile iron pipe, also contain known carcinogens.

Once again we are troubled by the EPA's methodology and its evaluation of the substitute products. Many of the objections raised by the asbestos cement pipe producers are general protests about the EPA's studies and other similar complaints. We will not disturb such agency inquiries, as it is not our role to delve into matters better left for agency expertise. We do, however, examine the EPA's methodology in places to determine whether it has presented substantial evidence to support its regulation.

As with friction products, the EPA refused to assess the risks of substitutes to asbestos pipe. *Id.* at 29,497–98. Unlike non-asbestos brakes, which the EPA contends are safe, the EPA here admits that vinyl chloride, used in PVC, is a human carcinogen that is especially potent during the manufacture of PVC pipe. As for the EPA's defense of the ductile iron pipe substitute, the EPA also acknowledges evidence that it will cause cancer deaths but rejects these deaths as overestimated, even though it can present no more support for this assumption than its own *ipse dixit*.

The EPA presented several plausible, albeit untested, reasons why PVC and ductile iron pipe might be less of a health risk than asbestos pipe. It did not, however, actually evaluate the health risk flowing from these substitute products, even though the ''EPA acknowledges that the individual lifetime cancer risk associated with the production of PVC may be equivalent to that associated with the production of A/C pipe.'' *Id.* at 29,497. The agency concedes that ''[t]he population cancer risk for the production of ductile iron pipe could be comparable to the population cancer risk for production of A/C pipe.'' *Id.*

It was insufficient for the EPA to conclude that while its data showed that ''the number of cancer cases associated with production of equivalent amounts of ductile iron pipe and A/C pipe 'may be similar,' the estimate of cancer risk for ductile iron pipe 'is most likely an overestimate,''' *see* 54 Fed.Reg. at 29,498, unless the agency can present something more concrete than its own speculation to refute these earlier iron pipe cancer studies. Musings and conjecture are ''not the stuff of which substantial evidence is made,'' *Aqua Slide*, 569 F.2d at 843, and ''[u]narticulated reliance on Commission 'experience' may satisfy an 'arbitrary, capricious' standard of review, but it does not add one jot to the record evidence.'' *Id.* at 841–42 (citations omitted). ''While expert opinion deserves to be heeded, it must be based on more than casual observation and speculation, particularly where a risk of fatal injury is being evaluated.'' *Id.* These concerns are of special note where the increased carcinogen risk occasioned by the EPA's proposed substitutes is both credible and known.

This conclusion only is strengthened when we consider the EPA's failure to analyze the health risks of PVC pipe, the most likely substitute for asbestos pipe, which the EPA concedes poses a cancer risk similar to that presented by asbestos pipe. The failure of the EPA to make a record finding on the risks of PVC pipe is particularly inexplicable, as the EPA *already is studying* increasing the stringency of PVC regulation in separate rulemaking proceedings, an action that one of the very intervenors in the instant case has been urging for years. *See NRDC v. EPA,* 824 F.2d 1146, 1148–49 (D.C.Cir.1987) (en banc).

The EPA, in these separate proceedings, has estimated the cancer risk from PVC plants to be as high as twenty deaths *per year,* a death rate that stringent controls might be able to reduce to one *per year, see id.* at 1149, *far in excess of the fractions of a life that the asbestos pipe ban may save each year, by the EPA's own calculations.* Considering that the EPA concedes that there is no evidence showing that *ingested,* as opposed to *inhaled,* asbestos is a health risk, while the EPA's own studies show that ingested vinyl chloride is a significant cancer risk that could cause up to 260 cancer deaths over the next thirteen years, *see id.;* 54 Fed.Reg. at 29, 498, the EPA's failure to consider the risks of substitute products in the asbestos pipe area is particularly troublesome. The agency cannot simply choose to note the similar cancer risks of asbestos and iron pipe and then reject the data underpinning the iron and PVC pipe without more than its own conclusory statements.

We also express concern with the EPA's cavalier attitude toward the use of its own data. The asbestos pipe industry argues that the exposure times the EPA used to calculate its figures are much higher than experience would warrant, a contention that the EPA now basically concedes. Rather than recalculate its figures, however, based upon the best data available to it, the EPA merely responds that while the one figure may be too high, it undoubtedly underestimated the exposure levels, because contractors seldom comply with OSHA regulations. In the words of its brief, ''[t]hus, EPA concluded that its estimates contain both over and underestimates, but nevertheless represented a reasonable picture of aggregate exposure.''

The EPA is required to support its analysis with substantial evidence under TSCA. When one figure is challenged, it cannot back up its position by changing an unrelated figure to yield the same result. Allowing such behavior would require us only to focus on the final numbers provided by an agency, and to ignore how it arrives at that number. Because a conclusion is no better than the methodology used to reach it, such a result cannot survive the substantial evidence test.

Finally, we once again note that the EPA failed to discharge its TSCA-mandated burden that it consider and reject less burdensome alternatives before it impose a more burdensome alternative such as a complete ban. The EPA instead jumped immediately to the ban provision, without calculating whether a less burdensome alternative might accomplish TSCA's goals. *See* 54 Fed. Reg. at 29,489. We therefore conclude that the EPA failed to present substantial evidence to support its ban of asbestos pipe.

C

Gaskets, Roofing, Shingles, and Paper Products

We here deal with the remaining products affected by the EPA ban. Petitioners challenge the basis for the EPA's finding that

beater-add and sheet gaskets, primarily used in automotive parts, should be banned. The agency estimated its ban would save thirty-two lives over a thirteen-year time span, at an overall cost of $207–263 million ($6–8 million per life saved). *Id*. at 29,484.

We have little to add in this area, beyond our general discussion and comments on other products apart from a brief highlight of the EPA's use of analogous exposure data to support its gasket ban. For these products, the analogous exposure estimate constituted almost eighty percent of the anticipated total benefits—a proportion so large that the EPA's duty to give interested parties notice that it intended to use analogous exposure estimate was particularly acute.[27] Considering some of the EPA's support for its analogous exposure estimates—such as its assumption that *none* of the same workers who install beater-add and sheet gaskets *ever* is involved in repairing or disposing of them, and the unexplained discrepancy between its present conclusion that over 50,000 workers are involved in this area and its 1984 estimate that only 768 workers are in volved in ''gasket removal and installation,'' *see* 51 Fed.Reg. 22,612, 22,665 (1986)—the petitioners' complaint that they never were afforded the opportunity to comment publicly upon these figures, or to cross-examine any EPA witnesses regarding them, is particularly telling.

[37] The EPA also banned roof coatings, roof shingles, non-roof coatings, and asbestos paper products. Again, we have little to add beyond our discussions already concluded, especially regarding TSCA's requirement that the EPA always choose the least burdensome alternative, whether it be workplace regulation, labeling, or only a partial ban. We note, however, that in those cases in which a complete ban would save less than one statistical life, such as those affecting asbestos paper products and certain roofing materials, the EPA has a particular need to examine the less burdensome alternatives to a complete ban.

Where appropriate, the EPA should consider our preceding discussion as applicable to their bans of these products. By following the dictates of *Chemical Mfrs. Ass'n*, 899 F.2d at 359, that the quantities of the regulated chemical entering into the environment be ''substantial,'' and that the human exposure to the chemical also must be ''substantial'' or ''significant,'' as well as our concerns expressed in this opinion, the EPA should be able to determine the proper procedures to follow on its reconsideration of its rule and present the cogent explanation of its actions as required under *Chemical Manufacturers Association*.

D

Ban of Products Not Being Produced in the United States

Petitioners also contend that the EPA overstepped TSCA's bounds by seeking to ban products that once were, but no longer are, being produced in the United States. We find little merit to this claim, considering that sections 5 and 6 of TSCA allow the EPA to ban a product ''that presents *or will present*'' a significant risk. (Emphasis added.)

Although petitioners correctly point out that the value of a product not being produced is not zero, as it may find some future use, and that the EPA here has banned items where the estimated risk is zero, this was not error on the part of the EPA. The numbers appear to favor petitioners only because even products with known high risks temporarily show no risk because they are not part of this country's present stream of commerce. This would soon change if the produce returned, which is precisely what the EPA is trying to avoid.

Should some unlikely future use arise for these products, the manufacturers and importers have access to the waiver provision established by the EPA for just these contingencies. Under such circumstances, we will not disturb the agency's decision to ban products that no longer are being produced in or imported into the United States.

[38] Similarly, we also decide that the EPA properly can attempt to promulgate a ''clean up'' ban under TSCA, providing it takes the proper steps in doing so. A clean-up ban, like the asbestos ban in this case, seeks to ban all uses of a certain toxic substance, including unknown, future uses of the substance. Although there is some merit to petitioners' argument that the EPA cannot possibly evaluate the costs and benefits of banning unknown, uninvented products, we hold that the nebulousness of these future products, combined with TSCA's language authorizing the EPA to ban products that ''will'' create a public risk, allows the EPA to ban future uses of asbestos even in products not yet on the market.

E

Fundamental EPA Choices

Finally, we note that there are many other issues raised by petitioners, such as the EPA's decision to treat all types of asbestos the same, its conclusion that various lengths of fibers present similar toxic risks, and its decision that asbestos presents similar risks even in different industries. *See generally* 54 Fed.Reg. at 29,470–71 (detailing differences in potency of chrysotile and other forms of asbestos and toxicity of various fiber lengths). We mention these concerns now only to reject them.

Of these, any many similar points, the petitioners merely seek to have us reevaluate the EPA's initial evaluation of the evidence. While we can, and in this opinion do, question the agency's reliance upon flawed methodology and its failure to consider factors and alternatives that TSCA explicitly requires it to consider, we do not sit as a regulatory agency ourselves. Decisions such as the EPA's decision to treat various types of asbestos as presenting similar health risks properly are better left for agency determination and, while the EPA is free to reconsider its data should it so choose when it revisits this area, it also is free to adopt similar reasoning in the future.

VI

Conclusion

In summary, of most concern to us is that the EPA has failed to implement the dictates of TSCA and the prior decisions of this and other courts that, before it impose a ban on a product, it first evaluate and then reject the less burdensome alternatives laid out for it by Congress. While the EPA spend much time and care crafting its asbestos regulation, its explicit failure to consider the alternatives required of it by Congress deprived its final rule of the reasonable basis it needed to survive judicial scrutiny.

Furthermore, the EPA's adoption of the analogous exposure estimates during the final weeks of its rulemaking process, after public comment was concluded, rather than during the ten years during which it was considering the asbestos ban, was unreasonable and deprived the petitioners of the notice that they required in order to present their own evidence on the validity of the estimates and its data bases. By depriving the petitioners of their right to cross-examine EPA witnesses on methodology and data used to support as much as eighty percent of the proposed benefits in some areas, the EPA also violated the dictates of TSCA.

Finally, the EPA failed to provide a reasonable basis for the purported benefits of its proposed rule by refusing to evaluate the toxicity of likely substitute products that will be used to replace asbestos goods. While the EPA does not have the duty under TSCA of affirmatively seeking out and testing all possible substitutes, when an interested party comes forward with credible evidence that the planned substitutes present a significant, or even greater, toxic risk than the substance in question, the agency must make a formal finding on the record that its proposed action still is both reasonable and warranted under TSCA.

We regret that this matter must continue to take up the valuable time of the agency, parties and undoubtedly, future courts. The requirements of TSCA, however, are plain, and the EPA cannot deviate from them to reach its desired result. We therefore GRANT the petition for review, VACATE the EPA's proposed regulation, and REMAND to the EPA for further proceedings in light of this opinion.[28]

On Petition for Review of a Rule of the Environmental Protection Agency.

ON MOTION FOR CLARIFICATION

Before BROWN, SMITH, and WIENER, Circuit Judges.

PER CURIAM:

[39] Respondents, the Environmental Protection Agency (EPA) and William K. Reilly, seek a clarification of the status of the phase 1, or stage 1, provisions in the challenged rule, which provisions ban, effective August 27, 1990, the manufacture, importation, and processing of asbestos containing corrugated and flat sheet, asbestos clothing, flooring felt, pipeline wrap, roofing felt, and vinyl/asbestos floor tile, and any new uses of asbestos. See 40 C.F.R. §§763.165(a)–.167(a). The rule also requires labeling of phase 1 products after August 27, 1990, *see id*. §763.171(a), and prohibits the distribution in commerce of such products after August 27, 1992, *see id*. §763.169(a). *See Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1208 & n. 2 (5th Cir. 1991).

Respondents assert that the clarification is needed because, in part V.D of our opinion, *id*. at 1228–29, we have held that the EPA may ''ban products that once were, but no longer are, being produced in the United States.'' Thus, the motion seeks clarification of the status of any products that still were being manufactured, imported, or processed on July 12, 1989, which is the date on which the final rule was issued, *see* 54 Fed. Reg. 29,459 (1989), but which no longer were being manufactured, imported, or processed, as a result of the phase 1 ban, on the date of our opinion, which is October 18, 1991.

The motion for clarification is GRANTED. The holding in part V.D of our opinion applies only to products that were not being manufactured, imported, or processed on July 12, 1989, the date of the rule's promulgation. To the extent, if any, that there is doubt as to whether particular products are in that category, the EPA may resolve the factual dispute on remand.

1. OSHA began to regulate asbestos in the workplace in 1971. At that time, the permissible exposure limit was 12 fibers per cubic centimeter (f/cc), which OSHA lowered several times until today it stands at 0.2 f/cc. OSHA currently is considering lowering the limit to 0.1 f/cc, following a challenge to the regulation in *Building & Constr. Trades Dep't v. Brock*, 838 F.2d 1258, 1267–69 (D.C. Cir. 1988). The Mine Safety and Health Administration (MSHA) since 1976 has limited mine worker asbestos exposure to 2 f/cc. *See* 30 C.F.R. §71.702 (1990).

The Consumer Product Safety Commission (CPSC) has banned consumer patching compounds containing respirable asbestos, *see* 16 C.F.R. §§1304–05 (1990), and also requires labeling for other products containing respirable asbestos. Similarly, the Food and

Drug Administration has banned general-use garments containing asbestos unless used for protection against fire. *See* 16 C.F.R. §1500.17 (1990).

2. The main products covered by each ban stage are as follows:

(1) Stage 1: August 27, 1990: ban on asbestos-containing floor materials, clothing, roofing felt, corrugated and flat sheet materials, pipeline wrap, and new asbestos uses;

(2) Stage 2: August 25, 1993: ban on asbestos-containing ''friction products'' and certain automotive products or uses;

(3) Stage 3: August 26, 1996: ban on other asbestos-containing automotive products or uses, asbestos-containing building materials including non-roof and roof coatings, and asbestos cement shingles.

See 54 Fed. Reg. at 29,461–62.

3. *See Bell v. Wolfish*, 441 U.S. 520, 531 n. 13, 99 S.Ct. 1861, 1870 n. 13, 60 L.Ed.2d 447 (1979). While it is true that the joint brief of petitioners Centrale des Syndicats Democratiques, Confederation des Syndicats Nationaux, and United Steel Workers of America (Canada) (collectively along with petitioner Cassiar Mining Corp. (Cassiar), the ''Canadian petitioners'') also deal with some of the same issues raised by amici, we hold in part II.B, *infra*, that these petitioners lack standing. The arguments of amici cannot be bootstrapped into this case based upon the arguments of petitioners who themselves lack standing.

4. The EPA also seeks to bar the brief of Grinnell College. That brief, however, presents arguments directly related to the arguments raised by the parties seeking to prevent the ban of asbestos shingles.

5. *Association of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153, 90 S.Ct. 827, 829, 25 L.Ed.2d 184 (1970); *accord Panhandle Producers & Royalty Owners Ass'n v. Economic Regulatory Admin., 847 F.2d 1168, 1173–74 (5th Cir. 1988); Hazardous Waste Treatment Council v. EPA*, 861 F.2d 277, 282 (D.C.Cir. 1988) (per curiam), *cert. denied*, 490 U.S. 1106, 109 S.Ct. 3157, 104 L.Ed.2d 1020 (1989). We note that the zone of interest test is not one universally applied outside the context of the Administrative Procedure Act (APA), *see Clark v. Securities Indus. Ass'n*. 479 U.S. 388, 400, n. 16, 107 S.Ct. 750, 757 n. 16, 93 L.Ed.2d 757 (1987), but because it is the most useful factor in considering Congressional intent on the question of standing, we invoke it as an aid to our decisionmaking today, as we sometimes have in the past. *Cf. Moses v. Banco Mortgage Co.*, 778 F.2d 267, 271 (5th Cir. 1985).

6. *See, e.g., Carey v. Population Serv. Int'l.* 431 U.S. 678, 683–84 & n. 4, 97 S.Ct. 2010, 2015 & n. 4, 52 L.Ed.2d 675 (1977); *National Cottonseed Prods. Ass'n v. Brock*, 825 F.2d 482, 489–92 (D.C.Cir. 1987), *cert. denied*, 485 U.S. 1020, 108 S.Ct. 1573, 99 L.Ed.2d 889 (1988); *FAIC Sec. v. United States*, 768 F.2d 352, 357–61 (D.C.Cir. 1985). *Carey*, however, gives *jus tertii* standing to a party only if the party directly affected is incapable of asserting its own interests, which is not true in the instant case. *See Carey*, 431 U.S. at 683–84, 97 S.Ct. at 2015; *accord Craig v. Boren*, 429 U.S. 190, 195–96, 97 S.Ct. 451, 456, 50 L.Ed.2d 397 (1976). The cases from the District of Columbia Circuit, represented by *National Cottonseed* and *FAIC Securities*, appear to go too far in expanding the exception in the vendor-vendee relationship, at least when evaluating a statute so purely national in scope.

7. *See Warth*, 422 U.S. at 501, 95 S.Ct. at 2206 (noting that courts generally are relucant ''to extend judicial power when the plaintiff's claim to relief rests on the legal rights of third parties''). Cassiar mentions only one case, *Construction Civiles de Centroamerica, S.A. v. Hannah*, 459 F.2d 1183, 1190–91 (D.C.Cir. 1972), in which a foreign vendor was able to borrow its domestric vendee's standing rights to pursue its own claim. That case, however, involved the APA, which, unlike TSCA, does not confine itself to matters concerning national economic interests.

8. The Canadian petitioners also allege that United States treaty obligations, such as the provisions of the General Agreement on Tariffs and Trade (GATT), award them the right to protest the EPA's actions. GATT requires nations to indicate that their environmental decisions meet international standards, thus preventing countries from using arbitrary environmental rulings as *de facto* trade barriers. GATT, however, establishes trade dispute procedures of its own. These Canadian parties therefore have no standing here to challenge the EPA's decision.

9. These complaints include the failure of the EPA to cross-examine petitioners' witnesses, which it was not required to do, and the EPA's decision not to designate an AIJ, which also was within its discretion under 40 C.F.R. §§750.7 and 750.8 (1990). Similarly, the EPA's failure to issue subpoenas was of little moment, as the petitioners in fact suffered no injury from the lack of subpoenas. *See id.* §750.5.

We also note that while an independent panel of experts often might be needed, in this case the EPA was not required to assemble such a panel on asbestos disease risks, as it already possessed an abundance of information on the subject, including a report by the members of the Ontario Royal Commission, a study often cited by the petitioners themselves. Considering the number of studies available, the EPA was not required to assemble its own panel to duplicate them, except to fill in any gaps.

10. According to the EPA, if the analogous exposure estimates were not included, the benefits of the rule would decrease from 168 to 120 deaths avoided, discounted at 3%. 54 Fed. Reg. at 29,469, 29,485. The analogous exposure estimates, adopted after hearings were concluded, thus increase the purported benefits of the rule by more than one-third.

11. For some of the products, such as the beater-add and sheet gaskets, the analogous exposure analysis completely altered the EPA's calculus and multiplied four- or five-fold the anticipated benefits of the proposed regulation. This was a change sufficient to make the proceedings unfair to the petitioners and was of sufficient importance that the EPA's failure to afford any cross-examination on this issue was an abuse of discretion.

12. The term ''rulemaking record'' means (A) the rule being reviewed; (B) all commentary received in response to the (EPA) Administrator's notice of proposed rulemaking, and the Administrator's own published statement of the effects of exposure of the substance on health and the environment, the benefits of the substance for various uses and the availability of substitutes for such uses, and ''the reasonably ascertainable economic consequences of the rule'' on the national economy, small business, technological innovation, the environment, and public health; (C) transcripts of hearings on promulgation of the rule; (D) written submissions of interested parties; and (E) any other information the Administrator deems relevant. *See* 15 U.S.C. §2618(a)(3) (referring to §§2604(f) and 2605(c)(1) in regard to component (B) above).

13. The EPA cites *Superior Oil Co.*, 563 F.2d at 199, an APA case, for the proposition that in informal rulemaking, the arbitrary and capricious standard and the substantial evidence standard ''tend to converge.'' While it certainly is true that the requirement of substantial evidence within formal rulemaking is more strenuous, we acknowledged in *Superior Oil* that when comparing arbitrary and capricious to substantial evidence, ''[i]t is generally accepted that the latter standard allows for 'a considerably more generous judicial review' than does the former.'' *Id.* (quoting *Abbott Laboratories*, 387 U.S. at 143, 87 S.Ct. at 1512). Considering that Congress specifically rejected the arbitrary and capricious standard in the TSCA context, we will not act now to read that same standard back in by holding that the two standards are in fact one and the same.

14. *Cf. Southland Mower Co. v. CPSC*, 619 F.2d 499, 510 (5th Cir. 1980) (''It must be remembered that '[t]he statutory term ''unreasonable risk'' presupposes that a real, and not a speculative, risk be found to exist and that the Commission bear the burden of demonstrating the existence of such a risk before proceeding to regulate.' '' (Citation omitted.)).

15. The statute provides, in order, the possible regulatory schemes as follows:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance of mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6) (A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture as elected by the person to which

the requirement is directed. 15 U.S.C. §2605(a). As is plain from the order in which they are listed, options at the top of the list are the most burdensome regulatory options, progressively declining to the least burdensome option.

16. EPA argues that OSHA can only deal with workplace exposures to asbestos and that the CPSC and MSHA cannot take up the slack, as the CPSC can impose safety standards for asbestos products based only upon the risk to consumers, and MSHA can protect against exposure only in the mining and milling process. These agencies leave unaddressed dangers posed by asbestos exposure through product repair, installation, wear and tear, and the like.

17. Although we, as always, rely mainly upon the language of the statute to determine Congress's intent, we also note that the legislative history of TSCA supports the notion of TSCA's least-to-most-burdensome hierarchy. As the Senate sponsor of the ''least burdensome'' requirement stated, Congress did ''not want to give the Administrator unlimited authority and let him say, 'I will impose this control, if there are other controls that are effective and are less burdensome on the industry.' '' 122 Cong. Rec. 8295 (1976) (statement of Sen. Cannon).

In addition, the EPA itself acknowledges this hierarchy when it states in its brief that ''TSCA authorizes and directs [the] EPA to impose that burden [of a total ban] *if the risks of a substance cannot be adequately addressed in another way.*'' (Emphasis added.) The EPA does not explain how it can determine that the risks of a substance cannot be addressed in another way if it refuses to make a finding that the alternatives will not discharge the EPA's TSCA burden. It cannot simply state that there is no level of zero risk asbestos use and then impose the most burdensome alternative on that sole basis.

We do not today determine what an appropriate period for the EPA's calculations would be, as this is a matter better left for agency discretion. *See Motor Vehicle Mfrs. Ass'n* 463 U.S. at 53, 103 S.Ct. at 2872. We do note, however, that the choice of a thirteen-year period is so short as to make the unquantified period so unreasonably large that any EPA reliance upon it must be displaced.

Under the EPA's calculations, a twenty-year-old worker entering employment today still would be at risk from workplace dangers for more than thirty years after the EPA's analysis period had ended. The true benefits of regulating asbestos under such calculations remain unknown. The EPA cannot choose to leave these benefits high and then use the high unknown benefits as a major factor justifying EPA action.

We also note that the EPA appears to place too great a reliance upon the concept of population exposure. While a high population exposure certainly is a factor that the EPA must consider in making its calculations, the agency cannot count such problems more than once. For example, in the case of asbestos brake products, the EPA used factors such as risk and exposure to calculate the probable harm of the brakes, and then used, as an *additional* reason to ban the products, he fact that the exposure levels were high. Considering that calculations of the probable harm level, when reduced to basics, simply are a calculation of population risk multiplied by population exposure, the EPA's redundant use of population exposure to justify its actions cannot stand.

3. Reasonable Basis.

In addition to showing that its regulation is the least burdensome one necessary to protect the environment adequately, the EPA also must show that it has a reasonable basis for the regulation. 15 U.S.C. §2605(a). To some extent, our inquiry in this area mirrors that used above, for many of the methodological problems we have noted also indicate that the EPA did not have a reasonable basis. We here take the opportunity to highlight some areas of additional concern.

18. Recently, in a different context, we observed the important distinction between present and future injury. *See Willett v. Baxter Int'l, Inc.*, 929 F.2d 1094, 1099–1100 & n. 20 (5th Cir.1991).

19. We also note that the EPA chose to use a real discount rate of 3%. Because historically the real rate of interest has tended to vary between 2% and 4%, this figure was not inaccurate.

The EPA also did not err by calculating that the price of substitute goods is likely to decline at a rate of 1% per year, resulting from economies of scale and increasing manufacturing prowess. Because the EPA properly limited the scope of these declines in its models so that the cost of substitutes would not decline so far as to make the price of the substitutes less than the cost of the asbestos they were forced to replace, this was not an unreasonable real rate of price decline to adopt.

20. We thus reject the arguments made by the Natural Resources Defense Council, Inc., and the Environmental Defense Fund, Inc., that the EPA's decision can be justified because the EPA ''relied on many serious risks that were understated or not quantified in the final rule,'' presented figures in which the ''benefits are calculated only for a limited time period,'' and undercounted the risks to the general population from low-level asbestos exposure. In addition, the intervenors argue that the EPA rejected using upper estimates, *see* 54 Fed.Reg. at 29,473, and that this court now should use the rejected limits as evidence to support the EPA. They thus would have us reject the upper limit concerns when they are not needed, but use them if necessary.

We agree that these all are valid concerns that the EPA legitimately should take into account when considering regulatory action. What we disagree with, however, is the manner in which the EPA incorporated these concerns. By not using such concerns in its quantitive analysis, even where doing so was not difficult, and reserving them as additional factors to buttress the ban, the EPA improperly transformed permissible considerations into determinative factors.

21. This is not to say that an interested party can introduce just any evidence of a suspected carcinogen or other toxin in its efforts to slow down a valid EPA regulation. The agency may, within its discretion, consider the probable merits of such dilatory tactics and act appropriately. *Cf. National Grain & Feed Ass'n*, 866 F.2d at 734 (''[W]e do not require the agency to respond in detail to every imaginable proposal for tighter standards.''). Where, however, the health risks of substitutes, such as non-asbestos brakes and polyvinyl chloride (PVC) pipe, are both plausible and known, the EPA must consider not only the probable costs of continued use of the product it is considering, but also the harm that would follow from its regulation and increased use of an alternate, harmful product.

22. We note that at least part of the EPA's arguments rest on the assumption that regulation will not work because the federal government will not adequately enforce any workplace standards that the EPA might promulgate. This is an improper assumption. The EPA should assume reasonable efforts by the government to implement its own regulations. A governmental agency cannot point to how poorly the government will implement regulations as a reason to reject regulation. Rather, the solution to poor enforcement of regulations is better enforcement, not more burdensome alternative solutions under TSCA.

23. *See Environmental Defense Fund*, 636 F.2d at 1275 n. 17 (''[W]e must construe the statute 'so that no provision will be inoperative or superfluous' '' (quoting *Motor & Equip. M[rs. Ass'n v. EPA*, 627 F.2d 1095, 1108 (D.C.Cir. 1979), *cert. denied*, 446 U.S. 952, 100 S.Ct. 2917, 64 L.Ed.2d 808 (1980))); *see also Old Colony R.R. v. Commissioner*, 284 U.S. 552, 560, 52 S.Ct. 211, 213, 76 L.Ed. 484 (1932) (in interpreting statutory language, ''the plain, obvious and rational meaning of a statute is to be preferred to any curious, narrow, hidden sense'').

As the petitioners point out, the EPA regularly rejects, as unjustified, regulations that would save more lives at less cost. For example, over the next 13 years, we can expect more than a dozen deaths from ingested *toothpicks*—a death toll more than twice what the EPA predicts will flow from the quarter-billion-dollar bans of asbestos pipe, shingles, and roof coatings. *See* L. Budnick, *Toothpick-Related Injuries in the United States, 1979 Through 1982*, 252 J. Am. Med. Ass'n, Aug. 10, 1984, at 796 (study showing that toothpick-related deaths average approximately one per year).

24. In large part, our analysis draws upon our general discussion already concluded. Where necessary, however, we develop specific themes more appropriately addressed in the context of a specific product. The EPA on subsequent review should consider these specific comments as applicable to its procedures dealing with other products, where necessary. In other words, by presenting a concern in the context of one product, we do not mean to imply that it arises only in that area.

25. One of the study's authors, Mr. Anderson, submitted written testimony that the ''replacement/substitution of asbestos-based with nonasbestos brake linings will produce grave risks'' and that ''the expected increase of skid-related highway accidents and resultant traffic deaths would certainly be expected to overshadow any potential health-related benefits of fiber substitution.'' The ASME report itself concludes only that ''[i]f the eventual elimination of all asbestos in friction products is to be accomplished, additional future studies are required.'' This is an insufficient basis upon which to support the EPA's judgment that non-asbestos brakes are just as safe as asbestos brakes.

26. In this case, the EPA extrapolated data regarding asbestos exposure during installation of asbestos pipe products and estimated, by formula, how often workers would be exposed to asbestos during repair and disposal.

27. The EPA estimates drop from 32.24 discounted lives to 6.68 discounted lives without the analogous exposure data.

28. Pursuant to the Internal Operating Procedures accompanying Fifth Cir.Loc.R. 47, Judge Brown reserves the right to file a separate opinion.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, we will be having the vote on the Glenn-Chafee substitute after our respective conferences today at noon. I have several wrap-up remarks I want to make before we do break at 12:30.

The first thing I want to address is each day now we heard examples from proponents of Dole-Johnston about how silly some of these regulations are, and I agree with that. We have a lot that are very, very silly. I believe we have bureaucratic excess. We need regulatory reform, and there are plenty of

anecdotal stories to go around about what the problems are.

But I do not think we need to make our Government look any more stupid than it actually is, in some instances, and some of the things that have been stated as silly regulations have proven, upon investigation, to be not true. We do not need reform based on half truths and inaccuracies. Many of these stories have been shown to be not true or are, at least, serious exaggerations.

Let me give an example. The other day I believe the Senator from Utah said that if a company spills 1 pint of antifreeze, the Federal Government requires it to notify the Coast Guard in Washington. That is simply not true.

The main ingredient of antifreeze is ethylene glycol. It is covered by the Clean Air Act because of its high evaporation rate. According to EPA, you have to spill over 1,000 pounds of antifreeze to have to report an ethylene glycol spill; 1,000 pounds comes out to about 140-some gallons, 143 or 144 gallons, I believe. That would be almost three barrels of ethylene glycol that would have to be spilled.

If you did spill that much, you are supposed to report it to the National Response Center, which is staffed by Coast Guard personnel as part of a multiagency support for that Center. It is not just reporting to the Coast Guard. But the facts of the case are, it is 1,000 pounds and you report it to this Center, which is staffed by Coast Guard personnel as part of a multiagency support force.

There was also a claim made the other day that Federal rules prevent a farmer from diverting water from a river, even when the farm drains back into the same river, and this happened despite the involvement, I guess the story goes, even with the approval of the BLM, the Forest Service, and the State government.

I never saw any substantiation for this story, but I do believe that while the water diversion problem may have existed during past administrations when they allowed wetlands regulations to be divided among agencies with no coordination, that is not the case now. The Clinton administration uses an interagency memorandum of understanding that provides for coordination among agencies, that provides for farmers and ranchers to interact with only one agency, and provides a single set of guidelines coming out from the Government. Once again, there is a new approach to this being taken by this administration that makes the anecdotal information at, very best, an exaggeration.

Another example of distortion was the claim that EPA insists on regulating asbestos even when it says that the number of annual deaths from toothpick ingestion exceeds the number of deaths from asbestos exposure. This proves to be just flat wrong.

According to EPA, a 1984 American Medical Association study showed that toothpick-related deaths average about 1 per year for the whole Nation out of our 260 million people, or close to that many. In 1988, EPA released a report that estimated that 4,280 people have died over the past 130 years due to asbestos in the buildings in which they live. That averages out to more than 30 deaths a year.

According to EPA, this is actually a low estimate because many more asbestos-related deaths can be expected for building workers, such as custodians who are exposed at much higher levels. So here, again, we have the facts that show that the proponents are distorting the truth and relying on inaccurate anecdotal stories to create a false image of our Government.

Sure, we want reform. Yes, Government needs to work better, but let us be reasonable. Let us use common sense. We do not need to make up stories about the Government working against the public interest and then end up throwing out the baby with the bath water, as my colleague from California, Senator FEINSTEIN, put it yesterday. Let us not jeopardize public health and safety with scare stories of bureaucratic excess. Too much is at stake to justify such callous disregard for the public interest or the truth.

Mr. President, regulatory reform is one of the most important issues we are going to take up this whole Congress. There is clearly a need to reform the regulatory process. We can all tell the horror stories of regulations gone awry, but before we rush to fix a problem with even worse medicine, let us take a hard look at what balanced, fair, and effective regulatory reform is all about.

I believe that regulatory reform must not only alleviate unnecessary burdens on businesses and on States and on local governments and on individuals, but at the same time it must also ensure the Government's ability to protect the health, safety, and environment of the American people. That is my twofold test. That is a test of balance that is in the best interest of all the people of this country.

Today, we have an opportunity to vote for true regulatory reform, reform that focuses on the biggest regulations, that makes agencies weigh the costs and benefits of their actions, that makes agencies take a hard look at the regulations on the books. At the same time, we have the opportunity to vote for reform that maintains the ability of agencies to do their jobs. That is commonsense reform, and the Glenn-Chafee substitute to S. 343 is pure common sense.

Let me outline six major differences between the Glenn-Chafee substitute and the Dole-Johnston substitute. I hope those listening in their offices, those who may not have decided how they are going to vote yet after our noon break, will listen to these things and consider them very, very carefully, because these are major reasons why I feel you should support the Glenn-Chafee substitute.

First, the Glenn-Chafee substitute focuses on truly major rules. We require truly significant rules—it will be between 100 and 200 rules per year—to go through rigorous cost-benefit analyses and risk assessment requirements. Even though we voted to amend the threshold of a major rule to $100 million in the Dole-Johnston substitute, we also voted to require any rule that has a significant impact on small businesses to go through the rigorous cost-benefit analyses and risk assessment requirements.

Therefore, the Dole-Johnston substitute bill will still cover several hundred more rules than the Glenn-Chafee substitute and will tie up scarce agency resources with little added benefit. In fact, the estimate is this will run it up to somewhere between 500 and 800 regulations that would have to be reviewed per year. These are not cheap to do.

Alice Rivlin estimated that when it was at a $50 million estimate, that we would require an additional $1.3 billion and 4,500 additional full-time employees. Now this is run up several times over that, and I would presume that $1.3 billion per year is going to be exceeded by the requirements that we find in the Dole-Johnston substitute now.

That was not in the original bill, I realize, but it was voted on the floor, and as of now the small businesses going through the rigorous cost-benefit analyses and risk assessment requirements will run the cost and complexity of this way up.

Our goal should not be to swamp the agencies so they are unable to carry out their missions. Whether that mission be to protect the health, safety, or environment or another important public function, our goals should be to help them do their jobs more effectively. We should require these rigorous cost-benefit analyses and risk assessments for the rules that have a significant impact on the economy, not for all the rules now covered by S. 343. That is why a vote for the Glenn-Chafee substitute is a vote for commonsense reform.

Second, the Glenn-Chafee substitute requires cost-benefit analysis for all major rules, but does not make the agencies pass a least-cost, cost-benefit test. That is its decisional criteria, before issuing rules. Costs and benefits are often hard to quantify and cost-benefit analysis, while useful, is less than perfect. It is a developing science.

The Dole-Johnston substitute requires agencies to pass a set of four rigid tests before they can issue a major rule. Most troubling of these criteria is the least-cost test. The agency must pick the cheapest alternative, even if for a few more dollars it could save hundreds of more lives or reduce pollution by a much greater amount. In other words, common sense goes out the door on this approach. It has to be

least cost. Examples on the floor were given. If you had an additional cost of $2, and it would save an additional 200 lives, you could not put that into effect because you have to use least cost in the Dole-Johnston substitute as it is now constituted.

Dole-Johnston does allow agencies to use other more costly alternatives, but only in the case of ''scientific uncertainties,'' or ''nonquantifiable benefits.'' So if the agency is certain about a benefit or can quantify how much extra benefit they gain by using something other than the least-cost alternative, they are prohibited from doing it. That just does not make any sense at all.

Because these decisional criteria are tests that the agency must pass before promulgating a rule, the issue of whether the benefits really do justify the costs and whether the agency picked the least-cost alternative will certainly become matters for the lawyers to settle in court.

Agencies should absolutely be required to use cost-benefit analysis. I think we all agree on that. But they should not be forced to pass a rigid least-cost, cost-benefit test to issue every major rule. If an agency does not think a rule's benefits justify its costs, but still is required by law to issue that rule, the rule should come back to us in Congress. That is where the responsibility lies, and that is what we provide in this legislation. It can come back to Congress, and that is where it should be, because after all, as much as 80 percent of agency rules are strictly required by laws we have passed in the Congress. I keep coming back to this point, but the plain truth is that if we really want regulatory reform, we should start fixing the laws we have passed, not load up the agencies and the American people with more bureaucratic procedures and more litigation. That is what Dole-Johnston does.

Third, the Glenn-Chafee substitute provides for a review of current rules—in other words, laws, rules, regs, that are in effect now, maybe some have been in effect for many years—but with no automatic arbitrary sunset if agencies fail to review a rule.

We provide for review of existing rules, much like the Dole-Johnston bill, but we do not have an automatic immediate sunset of rules if an agency fails to review those rules according to schedule.

As the Senator from Louisiana points out, the agency may get up to a 2-year extension. True. However, it is still true that if the agency still does not complete its review by then, then at that point, the rule becomes immediately unenforceable; in other words, it is canceled. So it does still sunset after the extension. The Glenn-Chafee substitute, on the other hand, requires an agency that fails to review a rule according to schedule to issue a notice of proposed rulemaking to repeal the rule. And this process allows public comment on the rule and ensures that a rule does not sunset arbitrarily. The agency must then complete this rulemaking action within 2 years, and such action is judicially reviewable.

Also, an annual process is established for Congress to amend agency review schedules in cases where an agency does not schedule review of rules people think are in need of review. This process will lead to the review and elimination of outmoded rules. Dole-Johnston, with its review petition process, will lead to delay, waste of money, and lawsuits. Let me reemphasize these points and set the record straight from yesterday. All the charges that our agency review of existing rules has no teeth are just not true. Under Glenn-Chafee, agencies must review existing rules and solicit public comment on the review and on the schedule. Agencies just cannot sit back and do nothing about reviewing existing rules under the Glenn-Chafee substitute, as some of my colleagues said yesterday. Glenn-Chafee requires agencies to review existing rules, to set a schedule for that review, to solicit input from the public, and to complete that review within a time certain.

The Dole-Johnston substitute creates a petition process for interested parties to get a rule on the schedule for review. These petitions are all judicially reviewable and there is no limit on the number of petitions; there can be hundreds, there can be thousands. The agency has two options. If the agency grants the petition, it has to complete the review of that rule within 3 years, or the rule sunsets. If they deny the petition, they can get dragged to court. It seems to me that puts the agency between a rock and a hard place—3 years or the courthouse. It also seems to me that these petitions put interested parties, like the regulated businesses, not the agencies, in the driver's seat.

The Glenn-Chafee substitute has an enforcement mechanism to make sure agencies review rules, contrary to what we heard yesterday. Under Glenn-Chafee, agencies must publish a schedule to review rules. That is a requirement that is judicially reviewable. Agencies cannot just sit on their hands and not review rules. If an agency, upon review, decides to amend or repeal a rule, it must do so within 2 years, and that is judicially reviewable. If an agency does not complete its review of a rule within the allotted time, it must publish a notice of proposed rulemaking to repeal the rule. And it must complete that agency action within 2 years. And that is judicially reviewable. That is a real hammer.

We do not allow judicial review of what rules the agency decides to put on the list or of the deadlines for the review of those rules. But agencies must solicit and consider public input into this process. We just want to make sure the agencies spend their time and resources doing a review of rules, not defending their every action in court. We think, once again, that just makes common sense.

The Senator from Louisiana stated that the schedule for review of rules is in the sole discretion of the agency. This is misleading. We use the phrase ''sole discretion'' to stop industries and others from litigating what and when rules should be reviewed. If interested parties have complaints about rules not getting on the schedule, there is a specific process allowing annual amendments and additions to any schedule through Congress. If any groups of constituents feel that an important rule is being ignored by agencies, this is the politically accountable way to handle that problem. We should not add to the litigation explosion, the litigation burden that would otherwise be created through Dole-Johnston.

Fourth, the Glenn-Chafee substitute is not a lawyer's dream. We allow for judicial review of, one, the determination of a major rule and, two, whether a final rule is arbitrary and capricious in light of the whole rulemaking file. We do not allow separate challenges of the procedures of cost-benefit analysis or risk assessment.

The Dole-Johnston bill has much more judicial review which can be interpreted to allow a review of procedural compliance with analyses and assessments.

Senator JOHN KERRY of Massachusetts, yesterday, had a list of 88 different points of judicial review. That was taken from a longer list, as I understand it, of 144 that one of the agencies said, as they interpret the bill as now proposed under Dole-Johnston—they could find 144 separate areas where there could be judicial review. We have it here, and if I have time, I will read it. But under S. 343, this is one where OSHA has about 15 different places that they—more than that; it is about 30 different places where OSHA says they can see there would be judicial review, as they view it, unnecessarily, where things could just be tied up in court. I will get to that if I have time for it a little bit later.

I think it is important to remember that S. 343 has many more provisions for judicial review than what is found in section 625, the section the Senator from Louisiana kept coming back to yesterday. The Dole-Johnston substitute creates numerous new positions that are judicially reviewable. It changes the standards for review for the Administrative Procedure Act, and it makes fundamental changes in the use of consent decrees and burden of proof for industry compliance. All of these changes in Dole-Johnston, coupled with the judicial review language in section 625, mean one thing: more lawsuits, more money spent on lawyers, less money spent on the public's business of protecting the health, safety, and environment.

Fifth, the Glenn-Chafee substitute does not create brand new petitions by private persons that will eat up agency resources and will let special interests, not the agency or Congress, guide priorities. The Dole-Johnston bill creates

several new avenues for interested persons to petition agencies, including, one, issuance of amendment or repeal of a rule; two, amendment or repeal of an interpretive rule or general statement of policy or guidance; three, interpretation regarding meaning of a rule, interpretive rule, general statement of policy, or guidance; four, placing a rule on schedule for review; five, alternative methods of compliance; six, review of freestanding risk assessment. All petitions must be decided at a time certain, which ranges from 18 months to 180 days. Except for the petition for alternative method of compliance, all these petition decisions are judicially reviewable. That is a massive number of points of judicial reviewability.

Again, we see that the real effect of Dole-Johnston will be to create special avenues for special interests and more ways for lawyers to tie up agencies in court.

The Glenn-Chafee substitute has no special interest provisions. The Dole-Johnston bill, on the other hand, has very specific fixes for special interests. For example, it changes the Delaney clause and EPA's toxic release inventory. These provisions have no place in a Government-wide regulatory reform bill. Changes to these important laws—and I think some changes should be made—should be handled by the committees of jurisdiction in the context of full debate about the underlying laws. They should not be piggybacked on the larger process bill.

This way of lacing the process reform legislation with special interest fixes is not reform. It involves special pleadings for the special money few. The American people will pay a heavy price in the end if we go that route.

These are six important reasons why we should support the Glenn-Chafee substitute over the Dole-Johnston substitute. My colleague from Louisiana has tried to improve the underlying bill, S. 343. He has been out here on the floor every day, almost by himself, trying to make the case for his improvements. But I do not believe the improvements are enough. The bill is still too flawed to be supported. It endangered the public health and safety and the environment. It wastes Government resources. In enriches lawyers and bogs down the courts for the interests of a few. So I think we should enact the Glenn-Chafee substitute, which I feel is a commonsense reform.

I want to also set the record straight about two additional issues in Glenn-Chafee that the proponents of Dole-Johnston misrepresented yesterday. First is the issue of exemptions. Glenn-Chafee has been criticized for not having enough exemptions. There are several issues involved here. There is one question about general exemptions. Both Dole-Johnston and Glenn-Chafee exempt several categories of rules from the regulatory reform legislation by exempting them from the definitions of rule and/or major rule. The question is, how do the two bills differ?

Now, in total, I believe Dole-Johnston has more exemptions than Glenn-Chafee. I think some of these should actually be added to Glenn-Chafee. But Dole-Johnston is also missing some exemptions that Glenn-Chafee has. We need to get together on this. Dole-Johnston does not exempt actions relating to the removal of a product from commerce, for instance. It only exempts actions authorizing sales of a product. Now, this is wrong. If we allow expedited introduction of some product into the stores—that is, with no lengthy cost-benefit analysis and risk assessment—we should provide for expedited removal of dangerous products. That is only fair. Public health and safety demands no less.

If we just think about the lignite situation of a few years ago, we can see why it is important that we be able to expeditiously remove dangerous products from the marketplace.

Dole-Johnston also does not exempt Federal Election Commission rules and certain Federal Communication Commission rules relating to political campaigns. We believe the political nature of both these FEC and FCC rules recommend that they should not be treated like other rules. They may need review, but not under this legislation with review in the political environment of the White House and OMB.

Dole-Johnston does have exemptions not in the Glenn-Chafee bill. These are exemptions that also were not in S. 291, our bipartisan Governmental Affairs Committee bill. They have been added since then. No. 1, Dole-Johnston exempts rules relating to customs, duties and revenue; No. 2, international trade law and agreements; No. 3 public debt; No. 4, relief from statutory prohibitions; No. 5, decisions of the Federal Energy Regulatory Commission; No. 6, matters involving financial responsibilities of securities brokers and dealers.

Now, some of these exemptions do make a lot of sense. Customs duties and Treasury fiscal policy rules relating to the public debt, for example, should be exempted. These exemptions should be added to Glenn-Chafee. There are some areas we can agree and should keep working to improve the legislation. I think that is what we should do—keep talking about these and work out the things we all agree on are best between these two approaches.

Now, the issue of exemptions also involves the question about special exemptions. The debate last week went beyond the general exemptions to focus on whether special exemptions are needed to protect public health and safety rules. As my colleagues know, last week exemptions were added to Dole-Johnston for mammography standards and rules to protect children from poisoning.

At the same time, amendments for exemptions for meat inspection and safe drinking water rules were rejected. Again, this debate raised the issue of whether each bill needs special exemptions to protect important pending health and safety rules. The simple answer is that Glenn-Chafee needs no special exemptions, Dole-Johnston does.

First, both bills allow agencies to use the current APA good-cause exemption. This allows an agency to exempt a rule from notice and comment rulemaking whenever necessary to protect the public interest. Once exempted from notice and comment procedures, the rule is exempt from the cost benefit and other requirements of the regulatory reform legislation. As far as Glenn-Chafee is concerned, no other special exemptions are needed.

Second, proponents of Dole-Johnston argued last week that their bill has an extra exemption for health and safety rules, and Glenn-Chafee does not have this exemption.

This is a smoke screen. Again, Glenn-Chafee does not need an extra special exemption. The APA good cause exemption is enough. Dole-Johnston needs an extra exemption because of its effective date and because of its onerous requirements.

Proponents of Dole-Johnston argue that their bill solved people's concerns about USDA's proposed meat inspection rule and other pending rules, because it provided a 180-day—later extended to 1-year—extension which is in now, and I emphasize the word ''extension'' for agencies to complete all required cost-benefit and related steps.

Dole-Johnston supporters characterized this section as an emergency exemption and criticized Glenn-Chafee for not having a comparable section. This is just wrong. The real issue is not about emergencies. Again, the APA gives Glenn-Chafee an emergency exemption.

The real issue involves pending rules. The USDA meat inspection rule, for example, is not an emergency rule. It has been under development for some time. It is, after all, a proposed revision of a set of inspection results that have been in effect, more or less, since 1906. It is not an emergency rule. Neither are EPA's cryptosporidium safe drinking water rules or FDA's mammography rules or the rules to protect children from poison.

These health and safety rules are vulnerable under Dole-Johnston not because of the inadequacy of emergency exemption provisions, but because Dole-Johnston, No. 1, covers pending rules; No. 2, subjects those rules to onerous cost-benefit analysis and decisional criteria requirements.

Dole-Johnston 1-year extension allows agencies to issue a rule, but then they still have to finish their cost before analysis in that year and then go back and revise the rule for the least cost test demands a different solution.

Moreover, regardless of the cost-benefit test, Dole-Johnston's other requirements, like its APA revisions I discussed yesterday, still open up the rule to immediate challenge. These include new APA rulemaking publication requirements, a new APA substantial

support standard, the petition processes, and all the related avenues for judicial review. Even with the Johnston amendment, only to cover rules for which a notice of proposed rulemaking was published after April 1, 1995, pending rules already in the rulemaking pipeline will emerge and immediately be subject to all of the Dole-Johnston requirements.

This threat to rules in the pipeline will make agencies stop rulemaking, reassess the sufficiency of their rulemaking record, and even reanalyze their proposed rule then modify and republish their proposed rule in order to address issues that would be raised under the new standards of Dole-Johnston.

Let me make this very clear. The issue is not whether an agency has or could exempt a rule from notice and comment rulemaking. The issue is whether a new rule coming out of the pipeline will satisfy the new requirements of the new law. The answer is that Dole-Johnston's extension does not solve this problem.

Unlike Dole-Johnston, Glenn-Chafee will jeopardize pending rule makings. First, the Glenn-Chafee effective date is 10 days after an enactment for proposed rules. Glenn-Chafee will only cover new rules proposed at least 6 months after enactment of the legislation. This 6-month delay will allow agencies a reasonable amount of time to put into place the new tough procedures required by the law.

Second, Glenn-Chafee requires an evaluation of costs and benefits. We also require a certification, whether the benefits justify the costs, and whether the rule will achieve its objectives in a more cost-effective manner than the alternatives.

While this necessities a cost-benefit analysis, it is in no way as prescriptive as Dole-Johnston's least cost decisional criteria, let alone Dole-Johnston's minimal impact Regulatory Flexibility Act requirements.

The bottom line is the proponents of Glenn-Chafee are not afraid of having agencies comply with our cost-benefit requirements. They are tough, but they are also fair and they are workable. The Dole-Johnston 1-year extension, on the other hand, is no solution. It is an extension, not an exemption. In fact, it simply introduced uncertainty.

All interested parties will have to wait until the completion of the required cost before analysis and satisfaction of the least cost test to learn whether the rule will continue in effect or whether the agency will reenter rulemaking to revise the rule.

This uncertainty and waste of resources serves no interest other than Government inefficiency and ineffectiveness. To summarize these exemption questions, No. 1, we may be able to agree on more general exemption to the definition of rule and major rule; No. 2, Glenn-Chafee does not need any special exemptions because of the APA's current good cause exemption. This protects emergency rules. Our future effective date also protects rules now in the pipeline. No. 3, the only bill that needs extra special exemptions is Dole-Johnston. Its immediate effective date will capture pending rules. Its onerous requirements will force many important rules back to the drawing board, wasting resources, causing delays and literally inviting litigation.

Another matter that must be set straight involves some statements made yesterday regarding the risk assessment provisions in Glenn-Chafee. Some have stated that the Glenn-Chafee substitute is weak because it requires risk assessments for only particular agencies and programs rather than requiring them for all agencies. This is not weak. It is common sense. It makes sense to make agencies that issue rules relating to health, safety, and the environment comply with these requirements. It does not make sense to cover every agency.

For example, what if the health care financing administration wants to change Medicare eligibility requirements. That is a rule related to health. Under Dole-Johnston they may have to do a risk assessment. That does not make sense. I do not think so.

All we are trying to do in the Glenn-Chafee substitute is to use some common sense. It does not make sense to cover all agencies, because not all agencies should do risk assessments.

Glenn-Chafee risk assessment requirements are less prescriptive and better science than the Dole-Johnston substitute. We need to be careful when legislating science. I do not classify myself as a scientist. Many scientists have warned against writing language that is too prescriptive.

For example, the Dole-Johnston substitute states that agencies must base each risk assessment only on the ''best reasonably available scientific data in scientific understanding.'' I ask, who determines what data are best in that requirement? What is best? Scientists say there is often wide dispute within the scientific community about what data are best, and it is common practice for agencies to use several different data sets.

This language will not allow that to happen anymore. They use several different data sets, and then they use their best judgment. In other words, they come back to something that may be startling, they use common sense—and that is what we would require.

The Dole-Johnston substitute also says that when conflicts among data occur, agencies must discuss, ''all relevant information including the likelihood of alternative interpretations of the data and emphasizing postulates that represent the most reasonable inferences * * *'' Again, who makes this determination of most reasonable? Proponents of S. 343 are assuming there is only one right answer. But scientists tell us that risk assessment is a growing science with lots of uncertainty, and rarely, if ever, is there just one right answer.

Let me also respond to what the Senator from Delaware said yesterday, that the Glenn-Chafee substitute goes against the National Academy of Sciences by preferring default assumptions to relevant data. That is just not right. It is wrong. I will read that again: It goes against the National Academy of Sciences by preferring the default assumption to relevant data.

Default assumption means, basically, that we do not know, so we make a decision not knowing, not having as much data as we would like to have. That is a shorthand of what default assumptions means. But that is just not right. On the contrary, we explicitly state in the Glenn-Chafee bill that, ''each agency shall use default assumptions when relevant and adequate scientific data and understanding are lacking.'' That does not say we prefer such assumptions to relevant data. We say use them when relevant data are not available.

Moreover, unlike the Dole-Johnston bill, we require agencies to issue guidance to ''provide procedures for the refinement and replacement of policy-based default assumptions.'' In other words, we even provide in there for going out and doing our level best to get some relevant information, not just to go along with default assumptions, as was stated yesterday.

So, I disagree with the Senator on that point. But I also want to add that we should not be in the business of telling the agencies to throw out all their assumptions, no matter what. That also would not be good science. What we try to do in the Glenn-Chafee bill is to make our risk language less prescriptive. We should not freeze the science, as many scientists fear would happen if we legislate risk assessment with no room for incorporating new understanding in how these assessments should be done.

That brings me to a more general point. The Senator from Louisiana brought up the issue several times yesterday regarding EPA's own reports about its ability to do good science. First, I do not think it is really fair to imply that EPA has not done a good job. That is not just my opinion. The National Academy of Sciences, in their 1994 report called Science and Judgment In Risk Assessment reaffirmed EPA's approach to risk assessment, stating—and this is from the National Academy of Sciences: ''EPA's approach to assessing risks is fundamentally sound, despite often-heard criticism.''

The report gave many recommendations for EPA to improve its policies and practices. As I understand it, EPA currently has programs underway to do just exactly that. In their March 1995 report, just a couple of months ago, called Setting Priorities, Getting Results: A New Direction For EPA, the National Academy of Public Administration, NAPA, concurred with the National Academy of Science findings.

Second, I think it is important to point out what else the NAPA study found, the National Academy of Public Administration. They state:

Congress should not attempt to define ''best science'' or ''best estimate'' in statutes. Congress should not attempt to legislate specific risk assessment techniques, or to adjust assumptions that underlie risk assessments. Such legislation would almost certainly inhibit innovation and improvement in risk assessments methods while constraining scientists from using their judgment in appropriate ways.

That is a very definitive statement from NAPA. And their report goes on to say, further:

Congress should draft any risk legislation so as to constrain the grounds on which risk analyses might be challenged in court. Courts should ensure that regulators follow reasonable procedures, but should not be put in the position of resolving science policy questions such as the definition of ''best science.''

That is what we try to do in the Glenn-Chafee substitute. We get rid of words like ''best data'' or ''the most reasonable inference.'' We limit judicial review, and that is a far better approach.

Another issue: What is and is not exempted from risk assessment requirements? The Dole-Johnston substitute exempts from the requirements actions to introduce a product into commerce. Should we not also exempt actions to remove a product from commerce? To put a product on the market, no risk assessment needs to be done. But to get a dangerous substance off the market, an agency has to do a full-blown risk assessment? That does not seem right.

I mentioned a few moments ago, what if we had the thalidomide scare going on today? That would be held up from being taken off the market, I guess. And that would not make any sense at all.

Finally, what about peer review? The Glenn-Chafee bill is actually tougher than the Dole-Johnston bill. We require peer review analysis of both cost-benefit analysis and risk assessment. We believe both should be reviewed. Both have lots of assumptions. Both should be scrubbed to make sure that agencies are making good decisions based on good information.

The Dole-Johnston bill also exempts peer review from the Federal Advisory Committee Act, FACA. Last year, during the health care debate, my colleagues who support the Dole-Johnston substitute made a very big thing about making sure that such panels were done in sunshine and complied with FACA.

Now they seem to have changed their minds, exempting all peer reviews from FACA. I do not think that is the way we should be conducting business. Glenn-Chafee does not exempt FACA, and that is the way we should do business.

Mr. President, some of the comments that were made last year about FACA, when we were considering health reform—my colleague, Senator MACK, for instance, said:

Secrecy in Government is not the American way. Secrecy in Government has led to all sorts of abuses and denial of freedom in other lands. We must keep our system of government open and accountable to the citizens of our country for public inspection and scrutiny. FACA requires that these meetings should be meetings in public, published notice of meetings in the Federal Register. Let the public know of the agenda for those meetings. The act requires boards to permit persons to obtain transcripts, appear and testify or file statements, make a record, keep minutes, working papers, et cetera, available. Keep detailed minutes, permit citizens to purchase manuscripts and transcripts. Keep adequate financial records. And the act also requires there should be a 2-year time period for boards and commissions.

Senator CRAIG, Senator GRASSLEY, Senator LOTT, I believe my colleague Senator SPECTER, Senator MCCONNELL, and Senator DOLE all spoke on behalf of keeping FACA and supported FACA and the importance of FACA.

Senator DOLE in particular said:

And, plain and simple, the American public did not trust the Clinton plan. They did not trust the secrecy in which it was written. They did not trust the principle that Government knows best. There is no reason why these boards should be granted the power to meet in secrecy. Indeed, there is every reason why they must meet in public.

On and on, we have several pages of those here. I will not read all of them into the RECORD.

But, Mr. President, I ask my colleagues to take a very hard look at the regulatory reform substitutes before them. I urge them to support the Glenn-Chafee bill. The Glenn-Chafee bill is a very tough reform bill. It also provides a balanced—repeat, a balanced—and a fair approach to reform. It will relieve regulatory burdens on businesses and individuals.

I repeat that. It will relieve regulatory burdens on businesses and individuals. At the same time, it will also protect the health and safety and the environment of the American people. This is responsible legislation. I urge your consideration and support.

Mr. President, in indicating the litigation that can occur with this legislation, OSHA has looked at this, and they asked a question, they postulated something here. The title of this is: ''S. 343, Endless Rounds of Litigation While Workers Wait For Protection.'' They say:

Imagine: You are a metal finisher who works with a toxin that causes acute pneumonitis, pulmonary edema, kidney disease, and lung cancer. You are not alone. 500,000 other men and women also work with this compound.

Right now, OSHA can protect you from exposure to this dangerous hazard by proving that: workers are exposed to a significant risk, the proposed standard would substantially reduce that risk, and the standard would be technologically and economically feasible.

Under S. 343, a protective rule to limit your exposure to this compound could be invalidated because of the endless opportunities for judicial review. For example, a petition could:

Claim that OSHA failed to consider substitute risks. (See 631(8); Sec. 632(a); Sec. 633(f)(3))

Claim that OSHA failed to distinguish between risk assessment and risk management. (Sec. 633(a)(2))

Claim that OSHA failed to use only the best reasonably available scientific data and scientific understanding. (Sec. 633(c)(1))

Claim that OSHA failed to select data based on reasoned analysis of the quality and relevance of the data. (Sec. 633(c)(2))

Claim that OSHA failed to consider whether the data was published in peer reviewed literature. (Sec. 633(c)(3))

Claim that OSHA failed to discuss alternative interpretations of that data that emphasize postulates that represent the most reasonable inferences from the supporting data. (Sec. 633(c)(5)(A))

Claim that OSHA used a policy judgement when relevant scientific data was available. (Sec. 633(d)(1))

Claim that OSHA failed to explain adequately the extent to which policy judgements were validated, or conflict with, empirical data. (Sec. 633(d)(2)(A))

Claim that OSHA failed to describe adequately reasonable alternative policy judgements and the sensitivity of the conclusions of the risk assessments to the alternatives. (Sec. 633(d)(2)(C))

Claim that OSHA inappropriately combined or compounded multiple policy judgements. (Sec. 633(d)(2)(3))

Claim that OSHA failed to express adequately the range and distribution of risks and the corresponding exposure scenarios, and failed to identify adequately the expected risk to the general population and to more highly exposed or sensitive populations. (Sec. 633(f)(1)(C))

Claim that OSHA failed to describe adequately the significant substitution risks of the rule. (Sec. 633(f)(3))

Claim that OSHA's peer review panel was not balanced and independent. (Sec. 633(g))

Claim that OSHA's response to peer review comments were inadequate. (Sec. 633(D)(3))

Claim that OSHA failed to provide adequate opportunity for public participation and comment. (Sec. 633(D)(3))

Claim that OSHA did not properly determine that the benefits of the rule justify the costs. (Sec. 624(b)(1))

Claim that OSHA failed to identify all of the significant adverse effects of the rule. (Sec. 621)

Claim that OSHA failed to give regulated persons adequate flexibility to respond to changes in general economic conditions. (Sec. 621(6)(C))

Claim that OSHA did not properly determine the least-cost alternative of the reasonable alternatives. (Sec. 624(b)(3)(A))

And more claims, and more claims, and more claims.

Thankfully, OSHA addressed this dangerous compound in its Cadmium standard. If S. 343 had been in place, however, this protective standard could have been delayed for years, leading to many work-related cases of cancer and kidney disease that could otherwise have been avoided.

So, Mr. President, this is just one little example of—what is that, 25 or 30, I guess, examples after just a first-cut look at S. 343 that OSHA indicates they feel would provide grounds for litigation.

Mr. President, I wished to make a reasonably complete statement, which I think I have done here this morning. We have combined several previous things that were brought up over the last couple of days as well as refuting some of the scare stories that have been applied. We still have basically six different areas in which we disagree.

It is on major rules and how we deal with those; on the cost-benefit analysis versus the least-cost approach. We provide for review of current rules with no automatic sunset. We disagree with Dole-Johnston that provides a sunset after an extension period.

Our bill is not a lawyer's dream. It does not provide nearly unlimited judicial review of everything from beginning to end. And our substitute does not create brand new petitions by private sources, by private persons or groups, that will just eat up agency resources and let special interests, not the agency or Congress, guide our priorities. And we do not have special interest provisions. We do not try to deal with things in this bill that deal with processes. We do not try to solve things like the Delaney clause on which separate legislation is being prepared by a different committee; toxics release inventory and things such as that.

So I believe we have a better bill here, and I hope that when the vote occurs this afternoon after our noon break we will have enough votes to pass this. I know it is a squeaker. I know that we may lack the votes to do this. But I hope that after people look at the two bills side by side, they will realize we take the more reasoned approach to this and that this really is a superior bill.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I support the Glenn-Chafee substitute to the regulatory reform bill, because it will achieve real reform without paralyzing the Government agencies that set health, safety, and environmental standards, and without wasting their resources on redtape that adds nothing to the wisdom of their decisions. It will lead to commonsense regulation, rather than excessive litigation and full employment for lawyers.

It will give us cost-effective regulations, rather than always the cheapest, but not necessarily the most effective, rule. And it will allow for full public participation in regulatory decisionmaking, instead of back door, special interest processes that exclude the public.

In each of these respects, our proposal is superior to the pending alternative. The Dole-Johnston alternative applies its cost-benefit analysis and risk assessment requirements to hundreds of rules each year that do not have enough of an impact on the economy to justify the expenditure.

To require dozens of costly, time-consuming procedural steps for even minor rules is wasteful and counterproductive. At a time when we are cutting agency budgets and laying off tens of thousands of employees, forcing the agencies to comply with these procedures is simply a way to prevent them from doing their real work—protecting the American public from significant health and safety threats.

Some say that we rely too much on the Government and that in doing so we risk our freedom.

But none of us as individuals can protect ourselves from the destruction of the ozone layer, from deadly bacteria in our food or drinking water, or from HIV when we get a blood transfusion. The Government must be active in these areas, and it must have the resources to do for all of us what we cannot do for ourselves. The Dole-Johnston proposal will cost at least $1.3 billion a year, but it does not provide any new funding to pay for these costs. This $1.3 billion is money that will not be available for enforcement and administration of essential laws and regulations.

The Dole-Johnston alternative relies on private lawsuits to be what some call the hammer to make agencies comply with the law. But as Professor Peter L. Strauss of Columbia Law School testified before the Judiciary Committee,

> Permitting judicial review of the process hands over to interested private parties weapons with which they can cheaply and unaccountably delay government action and make it more expensive to accomplish what government should be doing.

Our alternative, by contrast, leaves the review of rules more in the hands of Congress.

We can block any regulation from taking effect by invoking the legislative veto provision, which the Senate has already passed in separate legislation. That is a better answer than private litigation.

Congress gives agencies their power to regulate, and we are ultimately responsible for what they do. If a rule is unreasonably burdensome and costly, if it is based on bad science, Congress has the power and will have the opportunity under our alternative to intervene and block it.

We do not need to depend on special interest lawyers, and we should not depend on them, to ensure that Federal regulations make sense.

Senator HATCH has repeatedly cited examples of bad regulation from Philip K. Howard's book ''The Death of Common Sense.'' But Mr. Howard's testimony is enlightening, because he favors limits on judicial review like those in our proposal. Mr. Howard testified that, ''The main control over agencies should be oversight by Congress, not endless procedure or appeals to courts over procedural nitpicks.''

I also prefer the Glenn-Chafee substitute because the alternative creates special opportunities for businesses to escape regulation without any public involvement or notice. Section 629 of the Dole-Johnston alternative allows any regulated business to petition for a waiver from any major rule. The petition must be granted if the business shows that it is reasonably likely that the business can achieve the goal without complying with the rule.

In other words, if the new safe meat handling rules were in effect, and a meat packer were able to convince USDA that ''there is a reasonable likelihood'' that it could keep its meat free of E. coli without doing any sampling for bacteria, USDA would have to grant its petition.

The Dole-Johnston alternative gives no one else a chance to question or challenge the company's petition, to cross-examine its scientists, or even to know that the petition is pending. A secret relationship between the agency and the company is created. And if the agency grants the petition, no one can challenge the decision in court. Section 629(e) provides that ''in no event shall agency action taken pursuant to this section be subject to judicial review.'' The public interest is totally ignored.

When, as here, the issue is agency action to exempt a business from regulation, the Dole-Johnston alternative rejects any interest in risk assessment and good science. The agency is given 180 days to respond to the company's petition, which may not be sufficient time to investigate the issue fully.

The agency is not required to conduct a risk assessment, or subject its decision on waiving the rule to peer review. The Dole-Johnston alternative operates on the assumption that agencies can be trusted to make the right decision in the case of waiving a rule—but not in issuing the rule.

I object to this back door way to let businesses escape regulations that are designed to protect the public. At a minimum, there must be some opportunity for public involvement and comment.

I also question whether a process like this can be justified if it does not require peer review of the agency's decision, to ensure that there is not collusion. The Glenn-Chafee proposal does not provide for this kind of petition at all, and it is, therefore, superior to the Dole-Johnston alternative. I am also pleased that the Glenn-Chafee amendment does not include the special interest fixes or the Dole-Johnston alternative. For example, our proposal does not undermine the Delaney clause, which prohibits the approval of cancer-causing food additives.

We all agree on the need for Delaney reform, but it is a complex, technical subject that requires careful consideration by the committees of jurisdiction. The approach in the Dole-Johnston alternative is too simplistic and provides insufficient protection to infants and children, whose special diets leave them especially vulnerable to food-borne carcinogens.

Finally, the Dole-Johnston alternative continues to be a supermandate that requires agencies to choose the cheapest alternative in any case where the benefits to health, safety or the environment are quantifiable. Suppose that OSHA finds that requiring grain elevators to continuously vacuum up dust could save 10 lives a year by preventing dust explosions, but would be more expensive than have employees sweep up once a shift.

OSHA could not require the grain elevator to install dust control equipment, or to maintain a consistently

low ''action level'' of dust, because it is not the least cost alternative.

Our proposal, on the other hand, is not a supermandate and does not impose any new decision criteria. OSHA would be able to choose the more protective alternative, as it did under the Reagan administration, because that is the alternative that better accomplishes the goal of the statute—providing a safe workplace.

The Nation has made tremendous progress in the last quarter of a century toward cleaning up the environment, protecting endangered species, ensuring the safety of food and drugs, and improving health and safety in the workplace. We must not destroy this progress in the guise of reforming the laws and regulatory system that made it possible. The Glenn-Chafee substitute will help us streamline the regulatory process and make it more cost effective. It will not throw the baby out with the bath water.

I urge the Senate to support the Glenn-Chafee substitute.

Mr. BIDEN. Mr. President, I want to reform our regulatory process.

No one can deny that we need to write smarter, clearer, more effective, and more flexible Federal regulations. The question before us is not whether to reform our regulations. The question is how to reform them.

I believe that the most balanced answer to this question is in S. 1001, that Senators GLENN, CHAFEE, and I, along with other of our colleagues from both sides of the aisle, offer here today.

And I am afraid that S. 343, the Dole-Johnston bill, remains an unbalanced, costly, confrontational approach, that fails to meet its own reform criteria, and that will fail to protect the public health and safety—the general welfare that it is our Constitutional duty to protect.

Mr. President, the days are long gone when Americans grew their own food, made their own tools, stayed pretty close to home, and saw most disease as an act of God.

Now we buy food from all over the world, packaged and processed with unpronounceable chemicals, even irradiation.

We travel at higher speeds over longer distances, in larger and larger aircraft, and in automobiles that are as much electronic as they are mechanical.

Mr. President, as much as we may long for a simpler, more self-sufficient time, we must face the costs—in new risks to our health and safety—that come with the benefits of our rapidly evolving economy.

It is one thing to recognize those costs, Mr. President, and quite another to know what to do about them. What is the best way to protect against the new threats to our safety and health that come from the way we now live?

That is the heart of the question before us in this debate on regulatory reform.

Mr. President, the issue before us today has been a generation in the making. Many of the safety and health regulations now on the books had their origins 25 to 30 years ago, when we began to face up to the real costs—in injury, disease, and even death—from unregulated manufacturing processes and products.

By the end of the 1960's and the beginning of the 1970's, we came to realize that consumer choice alone—the guiding principle of the free market—was not enough to protect us from poorly designed, inadequately researched, or criminally negligent products and processes.

Our private enterprise economy functions so well because it is based on individual initiative and self-interest. Economic competition among free individuals drives the inventiveness that gives us new products, new technologies—progress that has given us the most powerful economy in the history of the world.

But those competitive individuals all face the same need to keep their costs lower than their competitors—each individual must find ways to avoid paying for anything that competitors get for free.

The unfortunate effect in this process is that what we all have in common—the need for clean water, clean air, clean food, safe working conditions, products that are safe and effective—those things we have in common are not necessarily protected in each business's calculations of economic efficiency.

At the same time, with the rapid technological changes brought by our free enterprise economy, we find ourselves more and more dependent on products whose safety and effectiveness we cannot evaluate ourselves—except, perhaps by experiencing the tragic consequences of thalidomide or DDT, or increasing automobile injuries and deaths.

So we need some way to make sure we can take care of those things we have in common—the common good.

A generation ago, the public began to demand cleaner air, safer food, water, and transportation. To accomplish those goals, Congress has passed laws, and agencies have written the regulations to put the goals of those laws into effect.

In era of skepticism, cynicism, and downright hostility toward government, these are the most popular federal laws now on the books, Mr. President.

Everywhere I travel in my own State of Delaware, and in other States around our country, people of every political persuasion tell that they continue to support government policies that keep our food and water safe and clean, that assure we can travel in safety, and that protect the environment.

At the same time, these are also some of the most frustrating, demanding, confusing regulations that our small businesses and property owners must face. Reform must balance the demands of the public for continued safety with the needs of those businessmen and women who seek reasonable relief.

Still, taken as a whole, in terms of their impact on the economy, these regulations are not, Mr. President, the unmitigated disaster some would have us believe.

Our food, our water, our prescription drugs, our highways and airways—even our children's clothes and toys—are safer today because of Federal regulations.

But at what cost, ask our colleagues? They tell us that our country is being strangled by regulations, jobs are being lost, that the burden of regulations is sinking our economy.

Now, Mr. President, a couple of days ago on the floor of the Senate I related a story from my own State of Delaware about regulations run amok, about a rule that flies in the face of common sense, a rule that cost a good friend of mine an outrageous amount of money simply to settle a claim out of court.

I know as well as anyone here that these horror stories are real, and that it is high time we undertook serious reform of the ways we write Federal rules and regulations.

But our job here is to weigh the full body of evidence, and to put the individual cases that are so frustrating and infuriating into context, and correct them individually. When I told that story, I said I would return to the floor to discuss the real cost of regulations, the real costs of these rules to our economy.

Fortunately, Mr. President, the big picture is not what some would have us believe. The fact is that the burden of regulation a share of our economy has not exploded as some of my colleagues have stated here on the floor.

As a matter of fact, the share of regulatory costs in our economy has actually gone down, as documented by an analysis done last month by the GAO. From 1977 to this year, the regulatory cost have shrunk by 11 percent—from about 4.5 percent of GDP to about 4 percent of GDP.

There is nothing in the facts to support the claim that the cost of regulations has exploded, nothing to justify putting hurdles, even landmines, in front of every regulation now on the books, and every regulation now in the works.

Mr. President, many of the stories we have heard here in recent days—stories of regulators' excesses and abuses of power—are more folklore than fact. But if even these horror stories were true, would that justify putting the health and safety of the American public at risk? Would the risks justify the benefits? Would it not be better to fix the particular abuses, rather than take the Dole approach?

Let us look at this another way, Mr. President. Many of my colleagues insist on using a grossly inflated estimate of the total cost of regulations—$562 billion a year, by one well-publicized estimate.

But that number includes costs like farm subsidies, that transfer funds from one sector of the economy to another—they add up to zero on the national accounts. And they also include the costs of complying with the IRS—a burden we all resent, but one that the Dole-Johnston bill does not touch. The IRS is not covered by regulatory reform—that is an issue for tax reform, a topic for another day.

So the real costs of complying with regulations is actually more like $228 billion a year, according the study cited in the GAO report I have here today—half of what some would have us believe.

But what do we get for those costs? Is this just money down the drain? Not according to the Center for Risk Analysis at the Harvard School of Public Health. Its report from March of this year cites one study—from the peer-reviewed Yale Journal on Regulation—that sets the benefits of health, safety, and environmental regulations at $200 billion a year.

A little quick math suggests that we are left with a total NET cost of regulations to the economy—if we take reasonable account of benefits that we can measure in dollars and cents, as well as the costs—of about $28 billion a year.

That $228 billion a year in regulatory costs means about $912 dollars a year for everyone in the country, or about $2.50 a day, for all of the health, safety, and environmental protection we enjoy.

If we throw in some of the benefits that cannot be measured in dollars and cents—a little extra peace of mind, some fairness in the distribution of benefits, deference to principles like federalism—that seems like a pretty fair deal.

Some might call it a bargain—clean water, safe food, secure transportation, and a few basic American values thrown in—for $2.50 a day.

Like most of the numbers we have heard in this debate, of course, these are estimates, extrapolations, and a reflection of how hard it is to measure these things. As much as we need to know the hard facts about the costs and benefits of regulations, we are still learning how to count them.

But that small number makes sense when we look at the effect of regulations on the growth of our economy, Mr. President. It is hard to find evidence that regulations are dragging us down. Throughout the entire post-War period to the present, Mr. President, before the enactment of significant environmental, health, and safety regulations and after, our economy has continued to grow at a remarkably steady pace.

When you look at the pattern of growth that our economy has been able to sustain over this period, Mr. President, it is impossible to detect a point at which regulations become a burden.

Between 1980 and 1994, our industrial output rose more than 50 percent. In the past 3 years, it has increased 15 percent. Our output is now twice as high as it was in 1970, and five times as high as 1950.

Our productivity has risen about 3 percent per year in the past decade. A recent comprehensive survey of the impact of environmental regulations—on those industries like chemicals, petroleum, and paper that have had the most to clean up—showed little or no correlation between regulations and profits, competitiveness, or productivity.

Where is the evidence that the cost of regulations has exploded?

Where is the evidence that the cost of regulations has become a major burden on the growth of the economy?

It simply is not there, Mr. President.

In fact, there is persuasive evidence that regulation has generated positive overall effects for our economy, by spurring innovations and economies.

We know that there are positive economic effects from lowering costly threats to public health and safety, threats that take their toll in medical bills, time lost on the jobs, and so forth. By making our citizens healthier and safer, regulations make our economy more efficient, because we do not waste scarce resources paying for preventable illness and injury.

But in addition to preventing wasteful expenditures—and preventing unnecessary human suffering—regulations can have positive effects on economic innovation.

Here is an example from that recent Business Week article: When OSHA issued a new standard for worker exposure to formaldehyde, costs to the industry were estimated at $10 billion. But when the affected industries changed the way they operated, the costs were negligible, and the changes improved their international competitiveness. The conclusion? The regulations were a large net plus for the industry and the country.

Let us think about this for a minute, Mr. President. Does anyone here want to argue that an economy that wastes less—that sends less of its waste products into the environment in which its citizens live—is less efficient than an economy that spews tons of waste into the air and water?

Logic does not support the idea that these regulations will make us less competitive—as a nation, over the long run—and the data do not support it, either.

So let us not let exaggerated costs and horror stories of regulatory excess stampede us into a wholesale attack on regulations that, by and large, are doing what we want them to do.

But there is a real problem, Mr. President, one that is at the heart of the movement to reform regulations, a movement we should all support.

That problem is the lack of flexibility and the lack of openness in rulemaking and enforcement of regulations. And that problem can be traced to the arrogance and insensitivity of the public officials charged with writing and enforcing many of our regulations.

It is fundamental, Mr. President—power corrupts. From the comically officious church parking lot attendant on Sunday morning to the most powerful public officials, people's heads swell when they are given power over others. Our regulatory agencies are not immune from this law of human nature.

Mr. President, the abuse of private power by polluters, unsafe employers, and sellers of dangerous products—that abuse of private power is the reason we need regulations.

And the abuse of public power by arrogant public officials is the reason we need regulatory reform.

It should be our job to fight both forms of abuse, not add momentum to that pendulum that swings from one extreme to the other.

Which of the two bills before us is more likely to remedy this problem and still protect the public interest?

I am convinced that the Glenn-Chafee approach is the more balanced, effective way to restore common sense to the way we write our regulations, without putting punitive layers of paperwork and procedures in the way of better regulations than we have today.

This approach requires a cost-benefit analysis and a risk assessment for public safety, health, and environmental regulations that have a major impact—$100 million—on the economy.

It backs those up with specific requirements for peer review, congressional review, and executive oversight of each agency's rule writing. And the courts will examine each agency's compliance with the scientific and economic justifications for each rule.

It requires that agencies include flexible, market-based alternatives in their considerations, and makes them show how the rule they choose matches up to those alternative for cost-effectiveness.

The Glenn-Chafee substitute calls for a thorough-going review of regulations now on the books, and sets up a procedure to assure that we have a sensible way to rank the risks we face—from contaminated air, water, or food, or from unsafe aircraft, cars, or toys. We will attack the worst problems first, the best way to allocate our scarce resources.

Mr. President, the Glenn-Chafee substitute is tough, thoughtful reform.

Ironically, the Dole-Johnston bill adds to the costs of regulation by adding inflexible, prescriptive procedures to the process, subject to petition and judicial review requirements that could keep better rules—replacing the bad ones on the books today—from seeing the light of day.

But most significantly, it forces agencies to write every rule according to fixed criteria—they must choose the least cost alternative among all the possible versions. But the cheapest rule may not be the best—it depends on the circumstances, it requires more flexibility.

The cheapest broom may get the job done in most cases, but when you need an operation, maybe you would consider paying a little more for the best doctor you can afford. It depends on the problem you are trying to solve.

Flexibility is not what the Dole-Johnston bill provides. Do we really think that public officials will become more accommodating, more concerned with differing circumstances, if they must, by law, choose the rule that they can defend in court as the cheapest way to get the job done?

Maybe they could get the public more benefits for a little more cost—maybe they could write a rule that is more cost-effective. But not under the Dole-Johnston bill.

Under the Dole-Johnston bill, agencies will practice defensive rule writing—to conform to whatever the latest case law says is the cheapest way to do things. They are not encouraged to apply a variety of criteria—maybe in some cases, the cheapest rule is the best; maybe we want to maximize the benefits in safety and health; maybe we want the rule with the most net benefits—the spread between costs and benefits.

But the Dole-Johnston bill is not concerned with flexibility—it mandates that every rule fit into the same box—the least cost box.

Furthermore, the Dole-Johnston bill will add bureaucracy and litigation, instead of reducing it. For example, lawyers will be able to challenge rules—or prevent them from going into effect—by raising any of a number of new issues which they cannot now raise.

This will keep Washington lawyers busy, and will keep agency lawyers busy. That means everyone will be in court—instead of out in the field, enforcing the new regulations. And in an effort to avoid lawsuits in the future, agencies will practice defensive rulemaking—being overly cautious, spending enormous amounts of money and becoming even more bureaucratic.

This is not reform. It makes the regulatory system more bureaucratic, not less. It results in more litigation and less policy. It makes it harder for the Government to respond to legitimate needs.

Furthermore, the bill includes new cumbersome and complicated processes by which industry and special interests can petition to have existing rules thrown out. There are numerous of these petition processes in the Dole-Johnston bill—and each of them can be brought into court if the agency denies the petition. That explosion in litigation simply is not what regulatory reform is about.

The effect of these and other procedural hurdles would be either to require larger bureaucracies, with bigger budgets—or, more likely under current conditions—to make the process of getting out new, better rules virtually endless.

If advocates of this gridlock think that hog-tying the bureaucracies will reduce the public's demand for safety, health, and environmental protection, they have seriously misread public opinion. The demand for these protections will collide with the cumbersome process they have devised, adding to the frustration with government—and to the hostility and suspicion of the special interests who are served by delay and weakening of those protections.

Regulatory reform should be the way to make the system more flexible, more open, but S. 343—the Dole-Johnston bill—would establish a more costly, less flexible rule writing process.

Mr. President, S. 343 has been written to be just a bad mirror image of the process some imagine we have today. It will tie up agencies in new procedures, adding to the costs and uncertainty of the regulatory process, the same complaints many citizens have rightfully leveled against the current process.

It would waste resources by piling requirements on rulemakers that add nothing to the public safety and health, and add nothing to the effectiveness of the regulatory process, and will do nothing to make agencies more accommodating to the real needs of individuals, firms, and communities.

Now I know that some of my colleagues here today, and certainly some of those business men and women who feel themselves most aggrieved by current regulations view the prospect of frustrating a few Federal bureaucrats eagerly.

Some may even see regulatory reform as pay back time: a chance to dump on Federal agencies some of the burdens they have felt.

Mr. President, I ask those who may feel that way to consider how they will feel if the effect on the regulatory process is to make it more complex, more time-consuming, more uncertain. Will those who feel most aggrieved by the current system be better served if they succeed in their attempt at retribution?

The fact is, Mr. President, that the big corporations whose contributions have bought them access to the legislative process—those corporations have always been able to make the system work. They play the regulatory system like a harp, and they have helped to write the new rules of the game, a game in which their deep pockets and hefty legal staffs will carry a lot of weight.

But what about the guy who cannot sail or fish on the Delaware River, or cannot take his family to the beach, when our waters are not protected? What about the family with crippling health care costs from their child's respiratory problems when our air is not clean?

What of the small businesswoman who just wanted a fair shake and a straight answer, who is told by OSHA or the EPA, ''Sorry, that rule has been held up by another petition—we cannot tell you how to bring your business into compliance?''

Mr. President, those of us who are rightfully proud of the accomplishments of public safety and health regulations should be among the first to want them to work efficiently and effectively, without waste of taxpayers' dollars and without antagonizing the citizens who operate the businesses and who own the property that are the subjects of so many of these regulations.

Any waste in the process, any wasted effort and dollars by those who comply with these regulations, is a waste of resources that could be used to create another job—or to improve the quality of our air and water, or increase the safety of our airways and highways.

The tough choices before us in the next few years will leave little room for excess in any programs. Those of us who support the Glenn-Chafee amendment recognize our continuing responsibility to promote the general welfare; reform is essential to wringing every dime's worth of protection out of every regulation.

We cannot maintain a regulatory process that thoughtlessly pushes the cost of regulation onto the people whose businesses create the products—and the jobs—we all depend on. We must not have a regulatory process that generates increasing resentment and frustration on the part of the businessmen and women whose behavior—and balance sheets—must change to put our regulations into effect.

Mr. President, all Americans benefit from regulations that work well, and that work efficiently. And we are all poorer if our businesses divert resources away from productive economic activity for regulations that are not well designed.

But demonizing Federal regulations—legislating by anecdote, where often imaginary excesses are inflated into an anti-Government scenario of bureaucrats run amok—is surely not the way to accomplish real regulatory reform.

Now, Mr. President, I am impressed by the extent of the changes in S. 343 since it was reported out of the Judiciary Committee. The sheer volume of revisions confirms, I believe, the minority view back then that it was seriously flawed and not ready for consideration by the full Senate.

The changes also reflect the good work of many of my colleagues, including Senator ROTH and Senator JOHNSTON, who have lent their expertise to remove some of the worst elements of the earlier version of S. 343. They have spent hours and hours over recent weeks debating and revising the details of what we all agree is a very complex, arcane bill.

But the volume of changes also has its downside, Mr. President. It means that this bill, in its current form, has never been the subject of committee hearings or debate. It has remained a moving target, defying any attempt to analyze the cumulative implications of its many interrelated subchapters and provisions.

In the process, it has become an amalgam of innumerable drafts and revisions, last-minute concessions, and internal inconsistencies.

The Dole bill began as a proposal that would frustrate, not promote reform, by adding paperwork, delays, and costs to a system already swamped by procedures. The many changes that have been adopted in recent weeks have blunted, but not deflected, its original intent.

That is why I am pleased to support the efforts of Senator GLENN, Senator CHAFEE, and many others, to revive a superior approach to legislative reform, one that was subject to extensive hearings, and that enjoyed a unanimous, bipartisan vote from the Governmental Affairs Committee.

I am pleased to be an original cosponsor of this alternative, that is a tough, considered approach to regulatory reform, that raises the standards for the regulations that will be written from now on, and that provides a rational program to assure all earlier regulations meet these new, higher standards.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Delaware.

Mr. ROTH. Mr. President, I rise to call upon my colleagues to take a leadership role to change the status quo, to reduce the cumulative regulatory burden that costs the average American family $6,000 per year, and to ensure that we will have smarter, more cost-effective regulation that will benefit us all.

I rise to repeat once again that meaningful regulatory reform is critical to ensuring that we reduce the regulatory burden while still ensuring strong protections for health, safety, and the environment. The answer to this problem is legislation that will make a difference. Make no mistake about it, the answer to this problem is the Dole-Johnston compromise, not the Glenn substitute.

Mr. President, there is no argument but what the regulatory process is broken. Virtually every authority who has studied the regulatory process—from Justice Stephen Breyer to the Carnegie Commission, from Vice President GORE to the Harvard Center for Risk Analysis, from scores of scholars to dozens of think tanks—agrees that the regulatory process needs to be reformed. And this problem is so undeniable that I do not believe any of my colleagues would publicly deny that there is a problem. But the question remains, who wants to do something about this problem that none of us can deny?

I submit that the Dole-Johnston compromise, S. 343, will do something about the problem. It will effect meaningful, responsible regulatory reform. And I regret to say that the Glenn substitute will not.

We all agree that we do not want to be where we are with Government regulation. We will admit that we need to move back to reform old rules and move ahead to be sure future rules make sense.

Mr. President, allow me to draw an analogy. You could compare S. 343 and the Glenn substitute to automobiles that purport to allow us to take this journey which we all say we want to make.

As I detailed yesterday, if you look at these two vehicles, they look similar at first blush. From a distance, they both have provisions for cost-benefit analysis, review of existing rules, risk assessment, comparative risk analysis, market mechanisms and performance standards, reform of the Regulatory Flexibility Act, congressional review of rules, and regulatory accounting.

When you try to start the Glenn vehicle, you find it does not go backward. It will not ensure that old, irrational rules already on the books are reviewed and reformed. You will find that the Glenn vehicle does not go forward. It does not have a focused cost-benefit test which will ensure that new rules make sense, that their benefits justify their costs. When you look under the hood of the Glenn vehicle, you will find to your surprise that it has no engine. The judicial review provision is so weak that an agency can do a very sloppy job of doing a cost-benefit analysis or other analysis and then does not have to act upon that analysis, so it makes a difference on the rule. And there is little anyone can do about it.

Now, what good is this—a car that cannot go in reverse, cannot go forward, and has no engine? That vehicle will get you nowhere. That is the Glenn substitute. If we are to have that, we may as well not have a regulatory reform statute because the Glenn substitute represents nothing but the status quo.

Mr. President, I need to take a little time to dispel a very serious misconception that some people have about the Glenn substitute, and that is it is not—it is not—the Roth bill. The Glenn substitute is not by a long shot S. 291, the bill that I introduced in January and that was reported unanimously out of the Governmental Affairs Committee.

While S. 291 was itself a compromise and was originally adopted by Senator GLENN as S. 1001, he has now taken steps to fatally weaken it.

Let me briefly highlight a few major departures. First, the Glenn substitute seriously weakens the lookback provision that was in the Roth bill. The Roth bill required agencies to review all major rules in a 10-year period or be subject to sunset or termination.

The revised Glenn substitute now makes the review of rules a purely voluntary undertaking. There are no firm requirements about the number of rules to be reviewed or which rules to review. In other words, it is a matter up to the sole discretion of the agency. There are no requirements about the number of rules, if any, that have to be reviewed.

A second major change. Senator GLENN's substitute guts the judicial review provision that was in the Roth bill. Section 623(e) of the Roth bill and the original Glenn bill stated that the cost-benefit analysis and risk assessment shall, to the extent relevant, be considered by a court in determining the legality of the agency action, and that meant that the court should focus on the cost-benefit analysis in determining whether the rule was arbitrary and capricious.

The Glenn substitute strikes that language. That weakens the whole bill. That means the Glenn vehicle has no engine. The Glenn substitute does adopt cost-benefit language that was in the Roth bill. But without any meaningful judicial review, the cost-benefit test does not mean much at all. For a reviewing court, the analysis is just another piece of paper among the thousands of pieces of paper in the rulemaking record.

The Glenn substitute asks the agency to publish a determination whether the benefits justify the costs. But the Glenn substitute does not push regulators to issue rules whose benefits actually do justify their costs. I have always believed we need a stronger cost-benefit test.

In effect, the Glenn substitute merely asks the agency to do a cost-benefit analysis. However, the agency can do a poor analysis and, worse still, does not have to act upon the analysis. In other words, the cost-benefit analysis need not make a difference in the rule. The rule can still be inefficient and ineffective. This is not the Roth bill. This is not what I want, and it is not what the American people want.

Mr. President, the Dole-Johnston compromise is the proper vehicle for regulatory reform. It will allow us to go back to review old rules on the books. It will allow us to go forward and to ensure, as a general rule, new rules will have benefits that justify their costs. It has an engine to ensure we will get where we want. And I urge my colleagues who want real regulatory reform to set aside partisan politics and join me in supporting the Dole-Johnston compromise.

The truth is, if you compare the Dole bill and the Glenn bill section by section, they, at first blush, look a lot alike. At bottom, there are some very key, important differences. First, meaningful regulatory reform must change future rules. The key to ensuring that new rules will be efficient and cost-effective is to have an effective cost-benefit test. The Dole bill has a focused cost-benefit test. The decisional criteria in section 624 ensures that the benefits of a rule will justify its cost unless prohibited by the underlying law authorizing the rule.

In contrast, the Glenn bill has no cost-benefit decisional criteria. The bill requires that a cost-benefit analysis be done, but the bill does not require that the cost-benefit analysis be used or that the rule will be affected by

the cost-benefit analysis. The agency only has to publish a determination whether the benefits of a rule will justify its cost and whether the regulation is cost effective. But the Glenn bill does not push regulators to issue rules whose benefits actually do justify their costs. I have always believed that an effective regulatory reform bill should have a stronger cost-benefit test.

Some of my colleagues have complained about the least cost component of the decisional criteria. Many of us have been willing and have sought to negotiate language to substitute for or remedy some of the concerns as expressed by my colleague, but I want now to return to a second point about regulatory reform.

The PRESIDING OFFICER. The Chair advises the Senator that under a previous order, the Senate was to recess at 12:30 and not to reconvene until 2:15.

Mr. GLENN. Mr. President, I ask unanimous consent——

The PRESIDING OFFICER. The Senator from Delaware has the floor.

EXTENSION OF TIME FOR RECESS

Mr. ROTH. Mr. President, I ask unanimous consent that the recess ordered for 12:30 p.m. today be delayed in order that Senator DASCHLE be recognized to speak for a period of not more than 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I ask unanimous consent that Senator ROTH be permitted to speak until the minority leader reaches the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. I thank the distinguished Senator.

Mr. President, as I was saying, I want to return to a second point about regulatory reform. Effective regulatory reform cannot be prospective only. It must look back to reform old rules already on the books, and the Dole-Johnston compromise contains a balanced, workable and fair resolution of how agencies should review existing rules. Agencies may select for themselves any particular rules that they think need reexamination, while allowing interested parties to petition the agency to add an overlooked rule.

To ensure that only a limited number of petitions will be filed, S. 343 limits petitions to major rules and sets a high burden of proof. Petitioners must show a substantial likelihood that the rule could not satisfy the cost-benefit decisional criteria of section 624. This is an efficient and workable method to review problematic rules.

The Glenn substitute, on the other hand, makes the review of agency rules a voluntary undertaking. There are no firm requirements for action, no set rules to be reviewed, no binding standard, no meaningful deadline.

The Glenn substitute simply asks that every 5 years, the agency issue a schedule of rules that each agency, in its sole discretion, thinks merits review. It does not require any particular number of rules to be reviewed, and if someone asks the agency to review a particular rule, there is no judicial review of a decision declining to place the rule on the schedule. Moreover, there is no judicial review of any of the deadlines for completing the review of any rules.

Mr. GLENN. Will the Senator yield for a question?

Mr. ROTH. My time is limited, so I want to continue.

The third point I want to emphasize is that effective regulatory reform must be enforceable to be effective. That means there has to be some opportunity for judicial review of the requirements of the legislation, just as there is with most any law Congress passed. S. 343 strikes a balance by allowing limited but effective judicial review.

S. 343 carves away from the standard level of judicial review provided by the Administrative Procedures Act which has existed for almost 50 years. The limited judicial review provided by S. 343 will help discourage frivolous lawsuits, and that is why S. 343 has limited judicial review.

An agency's compliance or noncompliance with the provisions of S. 343 can be considered by a court to some degree. The court can, based on the whole rulemaking record, determine whether the agencies sufficiently complied with the cost-benefit analysis and risk assessment requirements of S. 343 so that the rule passes muster upon the arbitrary and capricious standard.

The arbitrary and capricious standard is very deferential to the agency. A court would uphold the rule unless the agency's cost-benefit analysis or risk assessment was so flawed that the rule itself was arbitrary and capricious. The court would not strike down a rule merely because there were some minor procedural missteps in the cost-benefit analysis or risk assessment.

In contrast, the Glenn substitute, as now redrafted, does not permit meaningful judicial review of the risk assessment or cost-benefit analysis. The Glenn substitute only requires a court to invalidate a rule if the cost-benefit analysis or risk assessment was not done at all. But the Glenn substitute does not really allow the court to consider whether the cost-benefit analysis or risk assessment was done properly. Indeed, the language of the legislation has been so weakened that now substantial portions of this bill are irrelevant to the extent that a court could not require the agency to perform the cost-benefit analysis, the risk assessment or peer review in the manner prescribed by the bill.

Compliance with cost-benefit analysis and risk assessment requirements of the bill would be optional by the agency, the same way it is optional for them to comply with the Executive order that now requires these analyses.

Now, Senator GLENN has claimed that his bill is essentially the same as S. 291 which, of course, is the regulatory reform bill I introduced in January, which did receive bipartisan support of the Committee on Governmental Affairs. I say, as I stated earlier, that while the original Glenn bill was similar to the Roth bill, the latest version of the Glenn bill seriously differs from the Roth bill. Many of the provisions have been weakened. The Roth bill and the original Glenn bill required agencies to review all major rules in a 10-year period with a possible 5-year extension, or the rules would sunset or terminate. The revised Glenn substitute lacked any firm requirement about the number of bills to be reviewed.

Now, Mr. President, I think that is a very important and very significant change. As a matter of fact, as I said earlier, anyone who has reviewed the regulatory rules on the books have agreed that many of them are, today, irrelevant, cumbersome, and not equipped to do the job that they were intended. These studies have been made by distinguished organizations, including a group at Harvard. Our former colleague, and now Vice President GORE, has stated on a number of occasions, as part of his program to reinvent Government, that many regulations are undesirable. So I think it is a very, very serious mistake the way the Glenn substitute has weakened the lookback provisions of this legislation.

As I said, my original bill required all rules to be reviewed in a 10-year period, subject to a 5-year extension, and if a rule were not reviewed in that period of time, then, of course, the rule would be terminated. Under the revised Glenn substitute, that is not the case. It leaves everything entirely in the discretion of the agency head. An agency head could provide a 5-year schedule of reviewing rules that includes many appropriate rules. On the other hand, he or she could include one, zero, or five, as there are no requirements in the current version of the Glenn legislation that rules be reviewed.

As I say, I think this is a serious mistake. Worse still, Senator GLENN has weakened the judicial review provision that was in the Roth bill and that originally appeared in the Glenn bill. Here I have reference to section 623(E) of the Roth bill, the original bill, which stated that the cost-benefit analysis and risk assessment shall, to the extent relevant, be considered by a court in determining the legality of the agency action.

This is a matter that is particularly bothersome, because what the proposed legislation provides is that an agency will make a cost-benefit analysis and, where appropriate, it will make a risk assessment. But there is no requirement in the Glenn substitute that either the cost-benefit analysis or risk assessment be used in the rulemaking process. Now, it seems to me that that destroys the whole purpose of regulatory reform. I think many of us feel very strongly that regulatory reform,

as a general rule, means that benefits should justify costs.

Mr. President, I ask unanimous consent that the time before the recess be further extended for a statement to be made by the majority leader, following the statement of the minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

The minority leader is recognized.

Mr. DASCHLE. Mr. President, I appreciate very much the distinguished Senator from Delaware accommodating both myself and the majority leader.

Mr. President, over the last week we have debated a regulatory reform bill that poses a number of serious concerns. Senators have come to the floor with amendments to address those concerns for over a week now.

It has become increasingly clear that in order to produce a bill that will be acceptable to a majority of this body and the President, significant changes will need to be made. Frankly, given the way the debate has gone—the fact that we have until now been unable to pass most of our amendments—I am not optimistic that we will be able to bring this bill into a form that is reasonable and responsible, unless the circumstances change.

Despite efforts last week to clarify that the bill will not override existing law, the so-called least-cost standard that remains will drive agencies away from choosing more cost-effective and thus economically sensible and justifiable regulatory options.

Last week, the Senate rejected by one vote my amendment to protect the ability of the Department of Agriculture to issue its proposed rule requiring science-based hazard analysis and critical control point, or HACCP, systems in meat and poultry inspections.

I later learned that while I was here on the Senate floor recounting the story of 2-year-old Cullen Mack, a young boy from South Dakota who fell ill from eating beef contaminated with E. coli bacteria, people were suffering from E. coli poisoning in at least four States: Georgia, Tennessee, Wisconsin, and Illinois.

So, despite the fact that we are confronted presently by real gaps in our ability to ensure a safer food supply, and despite the fact that the USDA rule would take a huge step toward that goal, we continue to have a bill that would subject that rule to legal challenge and consequent delay.

Farmers have special concerns about this bill. The Department of Agriculture each year issues regulations to implement the farm program— regulations that address wheat, wool, rice, cotton, and feedgrain programs. The Department issues regulations to implement the Federal crop insurance program and the Conservation Reserve Program. USDA marketing orders—orders which are voluntarily approved by agricultural producers—are implemented through Federal regulations.

Many, if not all, of these regulations would be subject to the cost-benefit and risk assessment delays of this bill. They would be subject to the decision criteria in the bill calling for the least-cost option, and they would be subject to judicial challenge. Do we really want to foreclose regulatory options that would provide greater benefits to farmers? Is this what we really want for rural America? I certainly do not think that this makes sense for South Dakota or any other rural State.

Recently, the majority leader, came to the floor of the Senate to discuss the power of shame. His comments were made in the context of the public debate over the content of Hollywood movies.

The leader made the point that shame can be a very valuable tool in the effort to encourage movie-makers to be more socially responsible in writing and producing movies. I agree. I think that in this society, shame can be a very powerful means of encouraging more responsible behavior.

Certainly, the evidence is clear that the Community-Right-To-Know Program has been able to put shame to good use. What industry wants to declare year after year that they are releasing poisons into the air and water of local communities? What industry is so callous that it is not moved to reduce those releases when faced with public disclosure of its behavior?

Why, then, if we can agree that shame is such a powerful tool, are we attempting to erode the effectiveness of the toxic release inventory—known as the Community-Right-To-Know Program—in this bill?

Last Thursday, this body voted against an amendment by Senators BAUCUS and LAUTENBERG to protect the Community-Right-To-Know Program.

Apparently, despite the clear success of this program in getting industries to cut their releases of toxic chemicals, shame is too tough a medicine for some industries to endure. Instead of shaming the special interests into responsible behavior, the Senate essentially defended the special interests' shameful behavior.

In addition to the special-interest fixes and the willingness of the sponsors of the bill to undermine even the most needed and supported rules, there are countless opportunities for petitions in the bill that will consume vast agency resources. Petitions themselves are subject to judicial review, increasing the likelihood of delay and administrative burden.

The sum effect of all these provisions would create havoc with out ability to protect public safety. The Office of Management and Budget estimated that the Dole-Johnson bill would cost the Federal Government roughly $1.3 billion to implement, including the salaries of an additional 4,500 full-time Federal employees, who would be needed to fulfill the bills' requirements. I am skeptical that the bill itself could even pass a cost-benefit test. It may well impose more costs on the Federal Government—and thus the taxpayers—than it purports to save in regulatory expenses.

At a time when we are trying to downsize the Government and balance the Federal budget, it makes little sense to consider legislation that would reverse our course. Last week, the House appropriators recommended cutting the Environmental Protection Agency's budget by one-third. Other Federal agencies will surely feel the budget knife this year and in the years to come.

Where will the money to pay the costs of this bill come from? Where will we find this army of analysts to fulfill all the new requirements of this bill? Who will pay for them?

The primary beneficiaries of this bill will be the large corporate law firms, which undoubtedly will enjoy a renaissance of business if it becomes law. The judicial review provisions invite a morass of litigation. In fact, I understand that there will be at least 144 different issues that can be litigated, if this bill is enacted. It is ironic that this body passed legislation limiting opportunities for litigation earlier this year and now stands poised to pass a bill designed to create an explosion of litigation.

Mr. President, no Senator would agree that every regulation that has ever been issued by the Federal Government makes good sense. All of us Members recognize that excesses occur in the development and enforcement of rules.

In many cases, we in Congress are to blame, as we enact laws that provide little or ambiguous regulatory guidance. Federal agencies are staffed by human beings, who are known to make mistakes from time to time. The political winds frequently change, carrying the Federal agencies in different and often inconsistent directions. So, the entire process is imperfect.

The question we are confronted with, then, is how can we improve the regulatory development process without crippling the ability of the Federal Government to protect the quality of our food supply, our water, our air, and all the other of those services that Americans have come to expect.

The bill we have been debating now for a week was seriously flawed when it was introduced, and our efforts to improve it have been thwarted. It remains a bill that could be used to undermine the ability of the Federal Government to carry out its responsibility to protect our environment and the health of American families. It is not emblematic of the type of society that most Americans believe we should be striving for, and should not be enacted in its current form.

The alternative regulatory reform bill that has been introduced by Senators GLENN, CHAFEE, and others would provide serious, constructive reform that I believe should gain broad support. Unlike the Dole bill, the Glenn-

Chafee bill would limit the opportunities for litigation to the fundamental question of whether the rule is a major rule and whether the final rule is arbitrary and capricious, taking into account the entire rulemking record. Unlike the Dole bill, it does not allow judicial review of the agency decisions to grant or deny petitions.

The Glenn-Chafee bill contains no special-interest fixes, which do not belong in a procedural bill like this and which should only be addressed through hearings and legislation debated within the committees of jurisdiction.

The Glenn-Chafee alternative does not impose rigid criteria of the Dole bill that agencies must apply when selecting a regulatory option, driving agencies toward the cheapest, but not necessarily the most cost-effective, alternative.

I think we can all agree that the costs and benefits of proposed rules should be considered during their development. But calculating those costs and benefits can present a great challenge.

What is the value of ensuring that our children and grandchildren do not suffer the effects of lead on their ability to reason? What is the value of ensuring that when we take our families to see the Grand Canyon, the air will be clean and we will have a clear view of that incredible vista? Given the extreme challenges in characterizing these values, does it make sense to apply such a rigid test to the rules that will effect the quality of our lives so profoundly?

The Glenn-Chafee substitute places cost-benefit analysis in proper perspective. It requires agencies to identify the costs and benefits of proposed rules, but does not elevate cost considerations above all else. The cheapest option is not always the best or the most cost-effective one.

The Glenn-Chafee bill follows an approach that I believe provides a far better representation of the goals and objectives of mainstream America with respect to regulatory reform. Apparently the Governmental Affairs Committee agrees with me.

I say that because the Glenn-Chafee is nearly identical to the bill passed unanimously by the Governmental Affairs Committee. It is moderate and sensible, and I believe it should serve as a model for reforming the regulatory process. The modifications that Senators GLENN and CHAFEE subsequently made to the Governmental Affairs-passed bill represent good, sensible improvements.

First, we have eliminated the arbitrary sunset for existing rules, that would have occurred whenever an agency failed to perform the needed review in a timely manner. Given the history of antagonism to environmental and public health and safety regulations that have been demonstrated by recent administrations, it does not make sense to provide future administrations that might also be antagonistic to such rules with the incentive to intentionally fail to perform reviews as a back-door means of repealing existing rules and thwarting the will of Congress.

Second, the Glenn-Chafee bill eliminates the narrative definition of major rules, adding clarity to the bill, and limiting its scope so as not to overburden Federal agencies.

Finally, the Glenn-Chafee alternative incorporates technical changes to the risk assessment portions of the bill to more closely track recommendations made by the National Academy of Sciences, and to cover specific programs, not merely agencies.

These changes strengthen the bill, make it more responsible and more reasonable. If the Senate is interested in real reform and wants to pass a bill that can be signed into law then I urge my colleagues to support this substitute.

Mr. President, I know the distinguished majority leader is here. To accommodate him and allow Senators to get to the caucus, I yield the floor.

Mr. DOLE. Mr. President, I thank the Democratic leader, Senator DASCHLE. I will take just a moment. I want to review for my colleagues. I think we made some progress on the regulatory reform bill. I think everybody would like to vote for regulatory reform.

There are some limits. We cannot accommodate everyone's request. We would have a bill that many on this side and many on that side would not vote for if we tried to accommodate every request.

There will be a cloture vote immediately after the vote on the so-called Glenn-Chafee substitute. I think there will be a third cloture vote. As I set out in the schedule, hopefully we would finish this bill today, to start on Bosnia late this evening or early tomorrow morning.

There has been a cloture petition filed. There could be a third cloture vote. I have not made that final determination. Sooner or later, we have to recognize we have just about accommodated everybody we can. We have made a number of major changes in this legislation. Some are concerned that perhaps we made too many—''we,'' talking about the people who manage the bill and understand the bill.

We think it is a good bill. It is real regulatory reform. It is what the American people are demanding. It is what small businessmen, farmers, ranchers, everybody else is demanding. We believe it is time to come to grips with it, and move on to something else.

We have had parts of 9 days on this bill. That seems to be a standard on the Senate side. Everything takes 9 days. Maybe this will take 10 days. I do not know that the end is in sight. I alert my colleagues, if you are for regulatory reform, vote for cloture; if you are opposed to regulation reform, vote no, as you did yesterday.

RECESS UNTIL 2:15

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:53 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GRAMS].

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

VOTE ON AMENDMENT NO. 1581

The PRESIDING OFFICER. Under the previous order, the question now occurs on amendment No. 1581.

Mr. SHELBY. Mr. President, I ask for the yeas and nays on the GLENN amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 48, nays 52, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—48

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Bryan	Hollings	Pell
Bumpers	Inouye	Pryor
Byrd	Jeffords	Reid
Chafee	Kennedy	Robb
Cohen	Kerrey	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dodd	Lautenberg	Snowe
Dorgan	Leahy	Specter
Exon	Levin	Wellstone

NAYS—52

Abraham	Gorton	McCain
Ashcroft	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Breaux	Gregg	Packwood
Brown	Hatch	Pressler
Burns	Hatfield	Roth
Campbell	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simpson
Coverdell	Inhofe	Smith
Craig	Johnston	Stevens
D'Amato	Kassebaum	Thomas
DeWine	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lott	Warner
Faircloth	Lugar	
Frist	Mack	

So the amendment (No. 1581) was rejected.

Mr. DOLE. I move to reconsider the vote by which the motion was rejected.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the pending substitute amendment to S. 343, the Regulatory Reform Bill:

Bob Dole, Bill Roth, Fred Thompson, Spencer Abraham, Kay Bailey Hutchison, Jon Kyl, Chuck Grassley, Craig Thomas, Orrin Hatch, Larry E. Craig, Mitch McConnell, Conrad Burns, Bob Smith, Jesse Helms, Jim Inhofe, Judd Gregg.

CALL OF THE ROLL

The PRESIDING OFFICER. Under the previous order the mandatory quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the amendment numbered 1487 to S. 343, the regulatory reform bill, shall be brought to a close?

The yeas and nays are required under the rule. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 53, nays 47, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—53

Abraham	Gorton	McCain
Ashcroft	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Breaux	Gregg	Packwood
Brown	Hatch	Pell
Burns	Hatfield	Pressler
Campbell	Heflin	Roth
Coats	Helms	Santorum
Cochran	Hutchison	Shelby
Coverdell	Inhofe	Simpson
Craig	Johnston	Smith
D'Amato	Kassebaum	Stevens
DeWine	Kempthorne	Thomas
Dole	Kyl	Thompson
Domenici	Lott	Thurmond
Faircloth	Lugar	Warner
Frist	Mack	

NAYS—47

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Bryan	Hollings	Pryor
Bumpers	Inouye	Reid
Byrd	Jeffords	Robb
Chafee	Kennedy	Rockefeller
Cohen	Kerrey	Sarbanes
Conrad	Kerry	Simon
Daschle	Kohl	Snowe
Dodd	Lautenberg	Specter
Dorgan	Leahy	Wellstone
Exon	Levin	

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. BRADLEY. I rise to express serious reservations about S. 343, the regulatory reform bill. After listening to over a week's debate, I remain doubtful that a vote in favor of S. 343 would serve the best interests of the American people. While I support carefully crafted regulatory reform efforts like the Glenn-Chafee substitute, S. 343 does not meet my standards nor the standards of the people of New Jersey.

I doubt whether my constituents want new red tape requirements which would delay long-awaited regulations for food safety, drinking water quality, worker protections and pollution control. Even with the changes adopted during the last week, S. 343 is still a prescription for delay, duplication, and judicial gridlock.

S. 343 is not true reform. It is full of exemptions and special interest provisions unrelated to the basic bill or which give assistance to particular industries. Its provisions will swamp agencies with requirements for hundreds of new, costly, and time-consuming analyses and it will undermine needed health, safety and environmental regulations already on the books.

S. 343 is filled with new opportunities for endless rounds of judicial review. Yesterday, our colleague Senator JOHN KERRY stated that the bill still contained 88 new places for court intervention in the regulatory process, despite the efforts of many Senators to improve this aspect of S. 343.

S. 343 could result in the sunset of many regulations if agencies failed to review them accordingly to required time schedules. Even worse, the schedules themselves might be manipulated by special interests who could overload agency review agendas and tie them up until regulations expired.

Finally, S. 343 still includes language which favors the least cost and not the most cost-effective regulations—an affront to common sense which could result in missed opportunities for sensible regulatory revisions.

Mr. President, this country needs regulatory reform. Regulated businesses and individuals deserve the most flexible, cost-effective regulations agencies can craft while still providing the protections Congress has provided and all of us need. But it is also time for us to admit the real cause of many regulatory complaints—overly prescriptive and sloppily drafted legislation.

While this bill needs further work, I hope we can resume negotiations and produce a regulatory reform bill we all can support.

AMENDMENT NO. 1487

Mr. PRESSLER. Mr. President, today I rise to express my support for the substitute regulatory reform amendment currently pending before the Senate. I commend Senator DOLE for putting together a measure that is balanced, fair and commands bipartisan support. Certainly, we need Federal regulations to protect the public health and safety. But the rules must be reasonable. They must make sense. That is exactly what the Dole substitute amendment attempts to ensure.

Mr. President, when I talk with South Dakotans, few topics raise their blood pressure faster than when they describe their frustrating dealings with the Federal bureaucracy. Government is supposed to work for us, not against us. Yet time after time, I hear horror stories of Washington bureaucrats running amok, imposing complicated, costly and silly rules.

Our current regulatory system is too large, too complicated, too burdensome, and too expensive. Worst of all, it is rapidly growing out of control. In the first two years of the Clinton administration, almost 140,000 pages of new Federal regulations were published. This is excessive. There is no way small businesses, local governments, or farmers and ranchers in South Dakota can possibly keep up with the changes.

Our current system costs all of us dearly. According to Thomas Hopkins, an economics professor at the Rochester Institute of Technology and the former Deputy Administrator of the Office of Management and Budget, OMB, every American household spends about $4000 of their hard-earned income annually to comply with Federal regulations. As a nation, we spend between $500 and $800 billion each year.

The overwhelming majority of Americans agree the Federal bureaucracy needs an overhaul. Last November's election was a clear indication for smaller, smarter government with less redtape. This legislation takes a big step in that direction. Its main provision simply would require that before major new regulations are enacted, Federal regulators must show that the benefits justify the costs. This is simple common sense. It would force Federal regulations to be reasonable. If a Federal regulator cannot show that the costs of a proposed rule are justified by the benefits, why should we allow it be implemented? Common sense says we should not. This is a sensible hurdle that newly proposed rules should be required to clear.

Mr. President, let me give two recent examples of ridiculous Federal regulations that demonstrate the need for this legislation. The U.S. Environmental Protection Agency, EPA, is charged with enforcing our Nation's safe drinking water laws. In an effort to enforce the law, the EPA zealously over interprets congressional intent. In effect, they rewrite the law ''raising the bar'' for municipalities by requiring excessively burdensome water standards without comparing the costs of their rules to the benefits they hope to achieve.

Each year it seems, state and local officials are told last year's water standards are no longer good enough. They are forced by the EPA to perform costly new tests for presences in their water supply. Unfortunately, the EPA

frequently relies on questionable evidence to show why the changes are necessary. For many rural communities in South Dakota, excessive drinking water standards threaten to break their small budgets.

Recently, the EPA has proposed yet another standard—one that would require communities to regulate sulfate levels in drinking water supplies. This proposed standard has been made despite the fact there is no valid scientific showing of harm resulting from higher levels of sulfate. Congress instructed the EPA to study this issue. However, instead of evaluating the health risk of sulfate in drinking water, the EPA proposed a sweeping rule to allow no more than 500 milligrams of sulfate per liter of drinking water. When promulgating the proposed rule, the EPA did not consider the costs of compliance. They have not explained or justified the supposed benefits the rule attempts to attain. They also have not given any reliable scientific basis for this rule.

The costs of enacting the proposed sulfate regulation would be enormous. It would affect roughly one-quarter of all the water systems in South Dakota—108 of the 483 water systems in the State. The South Dakota Department of Environment and Natural Resources, DENR, which opposes the EPA's proposed sulfate rule, has estimated the costs of compliance for those water systems would be $40 to $60 million. That is just the initial cost of compliance—not including operation and maintenance costs. Small, rural communities in South Dakota should not be forced to pay such a high price to enforce a regulation that has no valid scientific justification.

Let me put these figures in real terms we can all understand. The largest of the 108 affected communities is Madison, SD, with a population of 6,395 people. Currently, the average water bill for each household in Madison is $13.75 per month. According to the South Dakota DENR, if the proposed rule is enacted, the additional cost to each household would be about $10 per month. That would mean an average monthly water bill of $23.75, or a 73 percent increase over current bills. Remember, this figure is for the largest of the affected communities, which presumably would be the most able to absorb the costs of compliance.

Let us take Big Stone City, SD, as another example. With a population of 670 people, Big Stone City has the median population of the 108 communities in South Dakota affected by the proposed rule. Currently, the average monthly water bill per household in Big Stone City is $9.80. If the EPA has its way, each household in that community would see its water bill rise $27.50 for a total monthly bill of $37.30. That would be an astonishing 281 percent increase. Again, Big Stone City is the median size of the affected communities. Just imagine the impact the EPA's rule would have on communities smaller than Big Stone City.

Mr. President, what would these communities get in return for these shocking rate increases? Nothing. That is right. For years, South Dakotans have been drinking water containing sulfate with no apparent adverse health effects. The EPA has not been able to show scientifically that higher levels of sulfate in drinking water pose a real health threat to humans. The proposed rule would ensure drinking water has less sulfate, but that does not mean it is safer water. However, an EPA bureaucrat thinks the Federal Government should regulate sulfate. These plans are being made regardless of the enormous costs involved on small communities. This situation does not make sense.

Mr. President, as I stated earlier, clearly we need to take precautions to ensure the quality of our drinking water. However, common sense says, before spending billions nationwide to comply with a new regulation, we should ensure the benefits are worth the costs. The EPA should be required to demonstrate why it now believes sulfate is dangerous to human health. They should have to show how the benefits of their new rule justify the enormous costs it would impose on small communities like Madison and Big Stone City. That is what the Dole substitute would require of the EPA. Is that too much to ask?

Mr. President, let me give another example of a ridiculous Federal regulation that, several months ago, threatened farmers and ranchers in my State. The proposed regulation concerned the Endangered Species Act. Earlier this spring, the U.S. Fish and Wildlife Service considered listing prairie dogs under the Endangered Species Act, entitling them to numerous protections under Federal law, despite the fact there are 71 times more prairie dogs than people in South Dakota. Let me repeat that: in South Dakota, there are 71 prairie dogs for every man, woman and child—yet, earlier this year, Federal bureaucrats actually considered listing them as an endangered or threatened species.

Once a species has been listed under the act, certain uses of the land inhabited by the species can be prohibited until the condition of the species has improved to the point it can be taken off the list. Virtually, the entire western half of South Dakota potentially could have been affected. Fortunately, there are no longer plans to list the prairie dog as endangered or threatened. However, it still may be listed as a ''candidate species'' entitled to some level of Federal protection.

There are millions of prairie dogs in South Dakota digging even more millions of holes. Their holes are a real menace to cattle and horses. Ranchers are forced to destroy livestock which step in the holes and break their legs. Prairie dogs also eat grass and other vegetation, a sparse commodity in the western half of my State.

How can anyone believe prairie dogs are a threatened species facing possible extinction? Farmers and ranchers in my home State do not understand this. I do not either. If this absurd rule had been enacted, killing prairie dogs would have been a Federal offense. Their population quickly would have grown far beyond their current numbers—causing more harm and destruction to South Dakota farmers and ranchers—all with the Federal Government's blessing. If the situation several months ago were not so serious, it would have been laughable.

These examples show why people in my home State are fed up with the Federal regulatory process. I am too. Is it any wonder why we believe the Federal bureaucracy is out of control and must be reined in? South Dakotans certainly want safe drinking water, safe food and a clean environment. But they also want Federal rules that are reasonable, understandable and flexible to allow as much compliance as possible.

That is why I support the Dole substitute amendment. If it were enacted the EPA could not implement its proposed sulfate rule until it can show that the benefits of the rule justify the enormous costs involved. Again, is that too much to ask?

In addition to benefiting consumers, this legislation also would have a positive impact on small businesses in my State. The current level of regulation from Washington puts an incredible burden on small businesses. Over-regulation chokes businesses in paperwork, stifles innovative ideas and undermines the ability of American businesses to compete in international markets. I have talked to many small businessmen and women who believe due to the sheer number of regulations, the complexity of the rules, and the different standards of enforcement between areas of the country and even between different inspectors, it is impossible for them not to be in violation of some regulation at any given time. This situation is not acceptable.

We greatly need to move the Federal bureaucracy away from the ''gotcha'' mentality many have toward American business. Regulators should not see themselves exclusively as ''supercops,'' as many do, waiting to pounce on any business that violates some regulation in the most technical way. Regulators need to develop a cooperative relationship with businesses. Both should work together to find innovative and cost-effective ways to comply with the spirit of the law as intended by Congress, rather than with hypertechnical regulations.

American business is not the enemy. The vast majority of small businesses are run by fine, ethical businessmen and women who want to obey the law, not skirt it. They want to be good corporate citizens. They do not seek ways to bend or break the law. They work hard to treat their employees fairly.

They spend considerable amounts of money to provide a safe workplace for them. They do this not because the Occupational Safety and Health Administration, OSHA, or the Department of Labor require such action. They do it because it makes good, sound business sense. After all, satisfied employees are productive employees.

Judging from the enormous amounts of new Federal regulations continually being issued, however, you might think each American business spends all its time devising ways to bend or break the law. Every aspect of business life increasingly is being regulated. That has to stop.

Mr. President, to conclude, let me again state my support for the Dole substitute. The country needs less regulation from Washington. No one in my home State thinks there are too few Government regulations. No small business has asked me for more Government paperwork to fill out. No farmer or rancher has requested yet more restrictions on how they can use their own land.

The country needs less regulation. South Dakotans know Washington cannot regulate away our problems. Too many rules are on the books and not enough common sense is in the system. In short: Federal rulemaking needs an overhaul. The Dole substitute amendment would help reduce the number of rules generated by Washington. It would establish a sensible hurdle for new regulations: the costs must be justified by the benefits. That is simple common sense. The regulatory system cannot continue as it has been promulgating rule after rule with little concern for their practical effect. Is that asking too much? I urge my colleagues to support and vote for this legislation.

Mr. MOYNIHAN. Mr. President, the Comprehensive Regulatory Reform Act of 1995 is a response to the belief that our executive branch agencies have become unreasonable in their regulation of the behavior of businesses and individuals. This is a powerful idea whose influence has, until recently, been underestimated. No longer. This is the third time this year that the Senate has considered legislation to restrain such Government action.

On January 27, 1995, the Senate passed S. 1, the Unfunded Mandates Reform Act, which requires Congress to acknowledge, by recorded vote, the costs imposed by Federal laws on State and local governments, as well as on the private sector. President Clinton signed the unfunded mandates on March 22, 1995.

Just 2 months later, the Senate passed S. 219, the Regulatory Transition Act, which established a 45-day review period for congressional review of regulations. Conferees are now attempting to reconcile that bill with the House-passed legislation, which places a temporary moratorium on Federal rulemaking.

The same concerns have prompted the Senate to take up the Comprehensive Regulatory Reform Act of 1995 now before us. A central element of this bill is the requirement that agencies justify their actions through risk assessment and cost-benefit analysis. This is not a new idea, although it is given unprecedented emphasis in this bill. I first introduced legislation to require risk assessment of environmental regulations in 1991, and I have introduced similar legislation in each succeeding Congress.

All of these bills have been based on the simple proposition that decisionmaking by Federal agencies ought to be informed by the best available science. Of course, science cannot be the sole basis of agency decisions, for there are limits to scientific knowledge, and what we do know is imprecise. Yet science must be taken into account. We must have the humility to acknowledge what we don't know, but also the good sense to make use of what we do. That was the approach taken by the legislation I introduced in previous years, and it was the approach of the Johnston-Baucus-Moynihan amendment that passed the Senate as part of the Safe Drinking Water Act reauthorization bill in May 1994. That amendment would have required EPA to conduct risk assessments and cost-benefit analyses for all major regulations. EPA would have been required to certify that the benefits of a rule justify the costs and that no regulatory alternative would be more cost-effective in achieving an equivalent reduction of risk. Unlike the measure before us, last year's legislation would not have superseded existing law, and EPA's analyses would not have been subject to judicial review.

Our amendment was modest enough, but predictably it had opponents, including some members of the Clinton administration and certain representatives of the environmental community. They seemed to view the issue only in absolute terms, being of the view that requiring cost-benefit analysis and risk assessment would bring about the dismantling of environmental regulation by requiring EPA to consider risks and costs over environmental health and safety. Over the last 4 years, it has been our repeated experience—mine—to hear such complaints from environmental groups. Indeed, it is well known that opposition to risk assessment was significant enough last year to help kill the EPA Cabinet bill and the Safe Drinking Water Act reauthorization. Note well. Had the Environmental Protection Agency in 1994 accepted risk assessment and cost-benefit analysis as part of its mandate, it would be a cabinet department today.

Let me give one example of the sort of analysis some have chosen to apply to risk assessment proposals. On May 21, 1991, Joseph Thornton, a policy analyst with Greenpeace, testified before a hearing of the Environment Subcommittee of the House Committee on Science, Space, and Technology on the ''Risk Assessment: Strengths and Limitations of Utilization for Policy Decisions.'' This is what he said:

> Greenpeace and communities who have experienced risk assessment first hand are united that risk assessment endangers the environment, public health, *and the democratic process as it is now practiced*. The major real world use of risk assessment has been to approve pollution. . . . Even when [it has] been used for the purpose of setting priorities, quantitative risk assessment is a flawed, uncertain, and subjective process that is subject to political pressures from those who have the most resources, and the most influence. (Emphasis supplied.)

This was not untypical of attitudes we encountered. The terms of the debate even began to take on a curious doctrinal cast: It became fashionable at one point to refer to risk assessment as one element of an Unholy Trinity. According to Mr. John D. Echeverria, a National Audubon Society attorney quoted in the New York Times on February 7, 1994, the Unholy Trinity is comprised of proposals on risk assessment, unfunded mandates, and Government takings of private property. And so I suppose I should not be surprised that, despite the fact that my League of Conservation Voters record has frequently risen above 90 percent, and despite having once been Chairman of the Senate Committee on Environment and Public Works, I have never, in 19 years on the committee, received a letter of commendation from the environmental community, a community not the least averse to plastering congressional walls with plaques. As an advocate of risk assessment, I am viewed with suspicion.

Not surprisingly—it is an old story—the legislation now before the Senate is far more prescriptive than anything advocated in the past by this Senator. The controversy that accompanied any discussion of risk assessment and cost-benefit analysis as recently as a year ago has all but disappeared. Today, even opponents of the Dole-Johnston bill are quick to state they favor the use of sound cost-benefit analysis and risk assessment in environmental decisionmaking. A year has passed, an election has intervened, and now we are faced with the Comprehensive Regulatory Reform Act of 1995. One wonders whether the opponents of the early efforts by the Senators from Louisiana, Montana, and New York may be a bit wistful about the opportunity they passed up last year. Clearly, the terms of the debate have changed. The Senate has changed. We never seem to learn that the failure to recognize the need for sensible, incremental change invites radical change.

Although the Dole-Johnston compromise significantly improved the earlier drafts of this legislation, it does in my view overreact. I share many of the concerns of my colleagues and hope further amendments will be accepted to improve the bill. At this point, I would like to set forth the principles that have guided my votes on this important legislation.

As I have said, I do support the appropriate use of cost-benefit analyses and risk assessments in major rulemaking. However, I recognize that risk assessment and cost-benefit analysis are imperfect tools. Even in the best analyses, significant uncertainties exist. More important, any legislation that would impose a cost-benefit test must recognize that other factors including values, equity concerns, and policy judgments are equally important or even dispositive factors in the decisionmaking process.

These points were well illustrated during our debate on the acid rain provisions of the Clean Air Amendments of 1990. Cost-benefit considerations were important elements of the debate. However, in the end Congress made policy judgments based in large measure on the unquantified and unquantifiable value we place on our natural environment. We decided, for instance, that some regions of the country, such as upstate New York, should not be forced to bear a disproportionate impact of acid rain pollution. We now know that the actual costs of the acid rain program are less than one-third of most estimates at the time, and that we still do not understand the ultimate impact of acid deposition on the environment. That experience illustrated the limitations of cost-benefit analysis as a rigid decisionmaking tool, and it ought to be a lesson to us.

Returning to the Dole-Johnston bill, we reached a consensus last week on two major issues. First, we recognized the tremendous resource burden that risk assessment and cost benefit analyses impose on agencies, and we changed the definition of major rule to $100 million rather than $50 million. This is a move in the right direction. However, the adoption of another amendment, which extends the definition to include rules that have a major effect on small business, may recreate the problem we were trying to correct. Second, we clarified our intention that the legislation should not impose a supermandate. That is, it should not override existing law. This does not mean we are entirely satisfied with existing laws, but it recognizes that we will not suddenly attain to vastly more intelligent and effective regulations by this single piece of legislation.

I disagree with those who view regulatory reform legislation as a simple answer to the problems accompanying our current health, safety, and environmental statutes. Problems do exist—with Superfund, with the current interpretation of the Delaney clause, and elsewhere. To achieve true comprehensive regulatory reform, we should move forward with current efforts to reauthorize and improve important statutes such as Superfund, the Clean Water Act, and the Safe Drinking Water Act.

I also have continuing concerns with the judicial review and lookback provisions of the Dole-Johnston bill. Regulatory reform should not provide expansive opportunities for technical and procedural challenges, as much as K Street might wish. We should not turn the courts into arbiters of the adequacy of highly technical cost-benefit analyses and risk assessments. For example, section 634 of the Dole-Johnston bill would allow interested parties to petition agencies to review existing risk assessments and would subject agency decisions on petitions to court challenge.

Do we really expect courts to decide whether the agency or industry interpretation of the data should prevail? Do we really think we can legislate, and litigate, good science? Let us clearly and unambiguously limit judicial review only to final agency rulemaking actions.

Further, while I agree that the periodic review of existing rules is an important element of regulatory reform, the lookback process should be constrained to focus on the most significant opportunities for improvement. We need a process that is controlled by the agencies, using clearly defined criteria, with adequate opportunity for public comment—not one controlled by special interests or the courts.

I am pleased that the comparative risk principles which I have proposed on earlier occasions have been incorporated in both the Dole-Johnston bill and the Glenn-Chafee alternative. However, as I have said before, the use of comparative risk to help set agency priorities must recognize the limitations of current methods and provide for continuous development of the discipline. I therefore strongly support the recommendation in the bill that a nationally recognized scientific body be asked to evaluate the state of the science and identify opportunities for improvement of this important science policy tool.

Finally, it ought to be said that many of the problems with our current system cannot be solved by the application of cost-benefit analysis, risk assessment, or any other device. Recently, we received a major study conducted by the National Academy of Public Administration, ''Setting Priorities, Getting Results.'' The report makes a number of recommendations for improving environmental decisionmaking. As we debate the appropriate role of risk assessment and cost-benefit analysis, we should heed this admonition:

> Risk analysis is not a cure-all. The members of Congress and other decision-makers who have displayed a strong desire for more objective and precise quantitative estimates of environmental risks and of the costs and benefits of environmental protection will be disappointed. The unfortunate reality, that EPA and Congress must confront, is that neither risk assessment nor economic analysis can answer most of their crucial questions about environmental problems. The tools can only approximate answers with varying degrees of certainty, and the answers often cannot be reduced objectively to a few numbers. The objective findings of science are essential components of EPA's decisions, but wholly insufficient as a base for environmental policy-making.

The report goes on to state, ''Despite these problems, summaries of costs or benefits are useful if they encourage analysts or decision-makers to think rigorously about what impacts and values should be included.''

This is the core of what we need to accomplish in regulatory reform legislation: greater scientific rigor in agency thinking and decisionmaking. Let us acknowledge that with this legislation the task of creating a more effective national effort to improve the Nation's health, safety, and environmental quality has just begun.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, we have 53 votes. We need 60. I understand tomorrow we will have an additional four votes on this side of the aisle to make 57, 3 short of the 60.

I am trying to determine whether or not we want to go with this bill, whether we want to set it aside for a period of time, or set it aside forever.

I have been talking with the distinguished Democratic leader. It is my suggestion that if nobody objects, we stand in recess until 4:15 to give the principals involved a chance to go off somewhere to see whether or not they believe any more of these major issues can be resolved, which might move the bill along.

I think, rather than just sit in a quorum call for the next hour, we will stand in recess, unless the Democratic leader has some objection to that.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, I think that is a very good idea. Obviously, we are at a point where we have to work through what remains as significant differences between the two sides. I think an opportunity over the next hour to discuss those differences and determine whether or not they are reconcilable is a very good opportunity for both sides. I will encourage it and think that this is probably the best plan.

RECESS UNTIL 4:30 P.M.

Mr. DOLE. So, Mr. President, let me ask unanimous consent that we stand in recess until 4:30 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, the Senate stands in recess until 4:30, this date.

Thereupon, at 3:10 p.m., the Senate recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to

order by the Presiding Officer (Mr. THOMPSON).

Mr. DOLE. Mr. President, let me suggest the absence of a quorum for just a moment.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The majority leader is recognized.

RECESS UNTIL 5 P.M.

Mr. DOLE. Mr. President, I think most of our colleagues know there is a meeting in Senator DASCHLE's office underway to see if they can make headway on two or three issues on reg reform so we can make a determination whether to have the third cloture vote tomorrow or do something else, maybe Bosnia.

But the Presiding Officer is one of the principal Members of that negotiating team. And so he may go back and help the negotiation—I guess dealing with the judicial review section—I think it is in the best interest of all of us that the Senate stand in recess until 5 p.m.

I ask unanimous consent that the Senate stand in recess until 5 p.m.

There being no objection, at 4:32 p.m., the Senate recessed until 5 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANTORUM).

The PRESIDING OFFICER. The majority leader is recognized.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Members permitted to speak therein for 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPREHENSIVE REGULATORY REFORM ACT

Mr. DOLE. Let me indicate that I understand a number of our colleagues are still meeting in Senator DASCHLE's office on regulation reform. We hope to find out here before too long whether we will proceed with the bill or lay it aside, or just what may be developing. We would like to, obviously, finish the bill. It may not be possible.

BOSNIA

Mr. DOLE. Mr. President, following whatever disposition of regulatory reform, we will take up the resolution on Bosnia. We were visited today by Secretary of State Christopher and General Shalikashvili, and they made their pitch about how bad the Dole-Lieberman resolution would be on Bosnia, as far as lifting the arms embargo.

Somebody asked the question, if it is so bad, what is so good about what is happening in Bosnia now? Obviously, we did not have an answer. There is not any answer.

Today I received from Lady Margaret Thatcher a letter which I think is probably the best summation I have read about Bosnia and the tragedy there. I placed a copy on everyone's desk, but I will read it for the record.

The letter is as follows:

JULY 18, 1995

DEAR SENATOR DOLE: I am writing to express my very strong support for your attempt to have the arms embargo against Bosnia lifted.

I know that you and all members of the United States Senate share my horror at the crimes against humanity now being perpetrated by the Serbs in Bosnia. The UN and NATO have failed to enforce the Security Council Resolutions which authorized the use of force to defend the safe havens and to get humanitarian assistance through. The safe havens were never safe; now they are falling to Serb assault. Murder, ethnic cleansing, mass rape and torture are the legacy of the policy of the last three years to the people of Bosnia. It has failed utterly. We owe it to the victims at last and at least to have the weapons to defend themselves—since we ourselves are not willing to defend them.

The arms embargo was always morally wrong. Significantly, it was imposed on the (then formally intact but fragmenting) former Yugoslavia at that regime's own behest. It was then, quite unjustly and possibly illegally, applied to the successor states. Its effect—and, as regards the Surbs, its intention—was to ensure that the proponents of a Greater Serbia, who inherited the great bulk of the Yugoslav army's equipment, enjoyed overwhelming military superiority in their aggression. It is worth recalling that the democratically elected, multi-faith and multi-ethnic Bosnian Government never asked for a single UN soldier to be sent. It did ask for the arms required to defend its own people against a ruthless aggressor. That request was repeatedly denied, in spite of the wishes of the US administration and of most leading American politicians.

There is no point now in listing the failures of military policy which subsequently occurred. Suffice it to say that, instead of succeeding in enforcing the mandates the UN Security Council gave them, UNPROFOR became potential and then actual hostages. Airpower was never seriously employed either. The oft repeated arguments against lifting the arms embargo—that if it occurred UN troops would be at risk, that the enclaves like Srebrenica would fall, that the Serbs would abandon all restraint—have all now been proved worthless. For all these things have happened and the arms embargo still applies.

Two arguments are, however, still advanced by those who wish to keep the arms embargo in place. Each is demonstrably false.

First, it is said that lifting the arms embargo would prolong the war in Bosnia. This is, of course, a morally repulsive argument, for it implies that all we should care about it a quick end to the conflict without regard to the justice or otherwise of its outcome. But in any case it is based on the false assumption that the Serbs are bound to win. Over the last year the Bosnian army has grown much stronger and the Bosnian Serbs weaker. The Bosnian army has, with its Croat allies, been winning back crucial territory, while desertion and poor morale are badly affecting the over-extended Serb forces. What the Bosnian government lacks however are the tanks and artillery needed to hold the territory won and force the Serbs to negotiate. This lack of equipment is directly the result of the arms embargo. Because of it the war is being prolonged and the casualties are higher. Lifting the arms embargo would thus shorten not lengthen the war.

Second, it is said that lifting the arms embargo would lead to rifts within the UN Security Council and NATO. But are there not rifts already? And are these themselves not the result of pursuing a failed policy involving large risks to outside countries ground troops, rather than arming and training the victims to repel the aggressor? American leadership is vital to bring order out of the present chaos. No country must be allowed to veto the action required to end the present catastrophe. And if American leadership is truly evident along the lines of the policy which you and your colleagues are advancing I do not believe that any country will actually try to obstruct it.

The West has already waited too long. Time is now terribly short. All those who care about peace and justice for the tragic victims of aggression in the former Yugoslavia now have their eyes fixed on the actions of the US Senate. I hope, trust and pray that your initiative to have the arms embargo against Bosnia lifted succeeds. It will bring new hope to those who are suffering so much.

With warm regards,

Yours Sincerely,

MARGARET THATCHER.

Mr. President, having read the letter, I think it says it all. I know the administration has said we will finally have a policy. It will not be business as usual. After 30 months, we will do something.

No one is talking about committing American ground troops. In fact, just the opposite. Lifting the arms embargo keeps America out of any engagement. It seems to me that is something that should have been done a long time ago. We have waited almost a year. A year ago August we had our last vote on this important issue. Mr. President, 58 out of 100 Senators voted to lift the embargo—Democrats and Republicans, bipartisan.

This is not an initiative by Senator DOLE or Senator LIEBERMAN, though we are working together. This is an initiative of the U.S. Senate, in a bipartisan way, to address a very serious problem.

The President has made two promises. One, to commit 25,000 American forces, if, in fact, there is a peace settlement, to keep the peace. More recently, commit 25,000 Americans to extricate members of the U.N. protection forces in case of withdrawal.

I am advised by the Bosnian Foreign Minister today that only 30 U.N. protection force members are in occupied Serb territory today. And he asked the question, why would it take 25,000 Americans to extricate 30 members of the U.N. protection forces? He says very clearly that there will be no interference on the part of Muslims with any withdrawal of U.N. protection forces.

No question about it, this matter is very, very important. It is very serious, as Secretary of State Christopher told Members today at noon. It has been serious if you are the ones doing the dying—or even the killing. But one side has done nearly all the dying, and one side has done nearly all the killing.

Those doing the dying do not have tanks or heavy weapons or artillery to defend themselves. They have rifles. In many cases they surrendered their heavy weapons because they were told they would be safe in these safe havens. So they surrendered their heavy weapons, their only means to defend themselves, and notified, in the case of Zepa, Medjedja, Gorazde, that the safe havens—that Lady Thatcher points out in the letter were never safe—and now they are falling to Serb assault.

This debate will begin, if not today, hopefully tomorrow. I hope we will have broad bipartisan support, unanimous support. I know the Secretary of State told Members at the Democratic policy lunch today that timing is everything, ''This is a terrible time to bring up this resolution.''

We have been told that at every turn. It is always a bad time. We thought, ourselves, it was a bad time to bring up the resolution, when you had U.N. Protection Forces chained to poles and held as hostages so there would be no more air strikes, and used as human shields. So we deferred consideration of the resolution. And we have waited and waited and waited, hoping something good might happen. But nothing good has happened.

Again, the Foreign Minister of Bosnia, who will be here, I guess, for several days, and has met with a number of Senators in both parties, indicates clearly that the U.N. Protection Forces should go.

So I hope in the next 24 hours we will be able to move to the resolution. I hope my colleagues on this side will listen carefully to many on this side who are cosponsoring this resolution, and colleagues on the other side will listen carefully to Senator LIEBERMAN and others who will be leading the effort. The point I wish to make is this is not a partisan effort. It is not an effort aimed at President Clinton. I complained—or criticized the Bosnian policy during the Bush administration. So it is not something that we have discovered because we now have a Democrat in the White House.

So for 30 months, many of us originally supported Candidate Clinton, who said we ought to lift the arms embargo and have air strikes. We supported him. I remember meeting in the White House in 1993, in the spring, and we were talking about lifting the arms embargo. Most of us there supported the President's desire at that time to lift the arms embargo.

Then, for some reason—it has never been fully understood by this Senator—it just sort of went off the radar screen. Bosnia was forgotten. It is as though the President never said anything about Bosnia, never said anything about lifting the arms embargo. Then we were told a year ago, in April, if we would just wait—and there was a resolution offered by the then Democratic leader, Senator MITCHELL, and Senator NUNN, that they would go to the United Nations and make a plea that the British and the French also lift the arms embargo. That was one way to stall any action on the other resolution.

The trouble is, they had never gone to the United Nations and asked for that, asked that the embargo be lifted. So we are back. We believe it is critical. We believe it is crucial. If anybody has any doubts, watch the television tonight, read the paper in the morning.

Again, to make it very clear to some who always feel it is going to Americanize the war, we have already Americanized the war. Scott O'Grady is an American, last time I checked. And he was shot down because we had not been notified that there were SAM sites in the area.

So American pilots are part of NATO. Lifting the arms embargo, removing the U.N. Protection Forces—and I commend the bravery and courage of all those who are engaged in the U.N. Protection Forces. But the problem is, they cannot protect themselves and they cannot protect the safe havens and they act as a buffer for the aggressors, the Serbs. Whether they intend it or not, they have been, in effect, an ally of the aggressors. And many of us do not believe that was ever intended.

Again, let me make a distinction between the Serb people and Milosevic and Karadzic and some of the others who are dedicated to ethnic cleansing, murder, butchery—whatever it takes to eliminate Bosnian Moslems. I know the Serb people are just as tired of the fighting, and the mothers are just as tired of sending their sons to face possible death, as anybody on the other side.

So we are going to be on the Bosnian resolution. I hope, on the matter of timing, it seems to me the best thing that could happen for this administration is for the Senate to pass with a big, big vote, our resolution. That would give the President and the Secretary of State or whomever they designate to negotiate with the British and the French and others a great deal of leverage. Because at that point they could say, ''The Senate has acted. The House has acted. It is time to go. It is time to go.''

Then we would turn the fighting over to the parties who are directly involved. Give the Bosnians a chance. They are a member of the United Nations. They are an independent nation. They have lost—70 percent of their land has been taken; 70 percent. And we are saying, ''Oh, wait. Wait. We want to wait a while.'' Will we wait until 80 percent is taken?

All they want is a right they believe they are entitled to, which we believe in this country is an inherent right, the right of self defense. They would hope for the same as a nation, the right of self defense as a nation.

In my view, they are entitled to that right. I think most of us agree they are entitled to that right. Take a look at the casualty figures. Who has been doing the dying? Who has been doing the killing? Who has been involved in that? I must say, in some cases it is probably hard to differentiate, because there has been a lot of treachery and tragedy on all sides. But for the most part, there is no question about who the aggressors have been. I just believe it is time for us to stand up.

This is a moral issue, one that should have been addressed a long time ago. It can be addressed without committing American forces. All we need to do is say we are going to lift the arms embargo and as an independent nation you are going to have a right to defend yourself—which does not seem to me to be a very difficult decision. We are not going to defend them. If we lift the embargo, it is not we defending them. If we lift the embargo, you defend yourself.

So I hope my colleagues will be prepared for debate on this very important issue, and that we can take final action before the week is out.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Wisconsin.

THE BOSNIAN SITUATION

Mr. FEINGOLD. Mr. President, I will take just a moment to comment on the leader's remarks. I believe that the leader's remarks are totally appropriate with regard to the Bosnian situation, and I feel that this should not be a partisan issue. This is a moral issue that appeals to a strong feeling throughout the country, I think, that something has happened here in Bosnia that goes against the very nature of the way we believe countries should be treated.

In my view, what the majority leader has said about the right to self defense is the key to this issue. There are a number of arguments that are going to come up that this will Americanize the war, to lift the arms embargo; that it is better to do it multilaterally versus unilaterally. But that all is to the side of the central issue, which the majority leader has pointed out, and that is: How in the world can we say that a country cannot defend itself? What would give us that right?

A terrible mistake was made in putting an arms embargo in a situation where one side had all the armaments and the other side was very poorly armed. I think we have to do everything we can to have a debate that does not make this a partisan issue. And to reiterate what the majority leader has said, all the arguments that are made have been made time and time again to justify delaying lifting the arms embargo. But he correctly points out that there is never a good time. No matter

what we do to try to lift the arms embargo, there is some excuse why it is not the right time to do it.

I say this as a person who, in his first month or two as a U.S. Senator, offered the first resolution I ever offered in this body to lift the arms embargo on the Bosnian Moslems. That was 2½ years ago.

The situation in Bosnia today would be very, very different had we lifted the arms embargo at that time. I have appreciated the fact that we have had, on many occasions, a good bipartisan effort to try to lift this arms embargo. If I can pick one issue since I have been here that really has not been partisan and should not be partisan, it would be this very issue.

So I look forward to the debate when this comes up. Nothing could be more urgent. I hope very much that we have an overwhelming vote in favor of the proposal, as at least described by the leader in his remarks.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that I may speak for as long as I need to speak on the proposal for urban regulatory relief zones in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

URBAN REGULATORY RELIEF ZONES

Mr. ASHCROFT. Mr. President, one of the main challenges, which we face as a society, that relates to the regulatory climate in America is the condition of our urban centers.

Today, many of our cities have become hopeless arenas of decay and despair. They are places where industry used to flourish, places where productivity used to take place. But the fact is that the number of enterprises in cities is plummeting. Just in the last 20 years, you can note that the number of businesses which inhabit our urban centers has gone down dramatically.

St. Louis, MO, has had a 32-percent decline in the number of businesses, from 3,497 businesses in 1972 to 2,386 businesses in 1992. Detroit, MI, for example, went from 6,945 businesses in 1972 to 3,448 businesses in 1992—a 50-percent decrease. So we see that one of our problems is that not only have cities become a difficult place for individuals, they have become a difficult place for businesses and industry.

As a matter of fact, it is important for us to understand, Mr. President, that this is a problem which is related to the notion that people who do not have jobs are at peril. The entirety of our regulatory framework is designed to deal with the well-being of individuals, to promote their health, their safety, and, hopefully, to extend their longevity, so that people live longer, so that they have an opportunity for a quality existence.

But the truth of the matter is at the very core of our urban societies. We have the biggest challenges that relate to health. We have the biggest challenges that relate to longevity, and the biggest challenges that relate to personal security.

America's urban areas suffer a murder every 22 minutes, a robbery every 49 seconds, an aggravated assault every 30 seconds. In a survey of the parents of first- and second-graders in Washington, DC, 31 percent of those said that they worried a lot about their children being involved in violence; almost 40 percent of the low-income urban parents worried about their children being shot. That is a quality of life issue. Thirty-one percent of the first and second graders in Washington, DC, reported witnessing shootings. One out of every three children had witnessed a shooting, and 39 percent said they had seen dead bodies. These are first and second graders.

We have a major challenge that relates to the security, the safety, and the health and well-being of our citizens in our urban centers. One out of every 24 black males in America will have his life ended by homicide. Our urban centers are so hopeless and filled with despair, and opportunity is so absent, that we find that the challenge is the challenge to stay alive. There is a death sentence for 1 out of every 24 black males.

The New England Journal of Medicine stated that a young black man living in Harlem is less likely to live to the age of 40 than a young man living in Bangladesh, which is perhaps the poorest of all of the nations on the face of the Earth. These things are startling. These things bother us. The pathologies of urban America are very challenging.

What is really stunning is the fact that the absence of work opportunity at the very heart of America's cities has been a big part of this condition. Youngsters in our urban settings are known to drop out at much higher rates than in other settings. Why? Some say it is because those youngsters in our schools do not see work opportunities, they do not see the promise or hope of doing something worthwhile with their lives upon graduation. Why persist in school if there will be nothing for you to do when you graduate? It is in that setting that we need to take a careful look at the way in which regulation has had an impact on what happens in our urban settings.

I became sensitized to this, Mr. President, when I was spending a lot of time with the people last year. I would work in a variety of settings in my campaign for the U.S. Senate. Across the State of Missouri, both in Kansas City and St. Louis, I encountered businesses that wanted to expand but could not. They wanted to grow and they wanted to offer more employment and they wanted to build the arena of opportunities. But they could not do it because of regulations—regulations that throttled them.

Just yesterday, I spoke about Anpaul Windows, a company whose employees—over half of them—were minorities. They were doing very well and the company needed to expand, but they had to leave the oppressive regulatory environment of the urban center for the green fields of suburbia because there were no contaminants in the green fields of suburbia. You could build a new factory there, and everything was in accordance with the way the factories were supposed to be, and you did not have to worry about the historic old buildings, or the prohibition about whether or not you could make a 8-foot door or a 10-foot door because of the historic designation of the factory.

What happened was the Anpaul Window Co. left the city of St. Louis, which left the city that much emptier. They are doing well. It is in Washington, MO, not Washington, DC. But it is 50 or 60 miles away from the people who need the jobs the most. They went to a new green field, but they did so because the regulatory framework really militates against jobs, industry, and development in the heart of our cities. All of those old factories and all of those old plants do not comply with all the new regulations. Lots of times, there is just a little narrowness in the door, or maybe a taint of some substance in the flooring. And the EPA comes in and says, well, grind over the floor and see if you can get the taint out, and if it does not come off, there may not be something that can be done to change it.

So what we have effectively done with our regulatory framework has been to impose the tremendous cost upon the citizens of our cities. It is a cost that not only they have to pay—higher costs for goods because our things are manufactured in plants that comply with regulations—it is an opportunity cost, because the city centers do not have the opportunities for employment. They do not have the opportunities for industrial development. Those individuals do not share in the opportunities of our culture. They are not worried so much about the lead poisoning from paint, they are worried about the lead poisoning from a .38. These are real challenges that we ought to face.

Let me tell you about the printing concern in Kansas City. The president has a publishing business which has grown over the past few years; it now employs 85 people. While business is doing well, the president wants to expand the business, but there is a problem. He could expand into more parts of the building in the downtown area,

in the urban center. He wanted to move into different parts of the building, but regulations prevent such expansion. The printing company has no environmental problems. But the landlord of the building where the business is located has had a problem with trace elements of PCB's in the floor material in parts of the building. Tests have shown there are no elements of PCB's in the air. They are somehow in the material of the floor of the building.

Now, the president would probably like to expand to these other floors of the building if he could be assured that there would be no liability. As it now stands, the EPA may condemn the whole building altogether. It would cost the company about $500,000 to move and to take all these jobs out of the city. And it looks like that is what they are going to have to do. The landlord has spent over $250,000 so far in legal fees, and another $100,000 trying to grind down the floors to see if he could get through all the PCB's. I suppose he probably released more PCB's into the atmosphere than could have ever happened otherwise.

The EPA, in other parts of the country, has allowed for a covering of the floor to take care of situations like this. But the EPA cannot seem to make a decision in this Kansas City concern. Here we stand to lose 85 downtown urban center jobs—the price of regulation—saying we cannot allow you to expand in this building for technical reasons that are not uniformly applied across the country.

I repeat, there have been situations where these kinds of things have been taken care of. But as it now stands, EPA's inaction has again stalled the economic progress and job growth where it was most sorely needed. If this situation is not resolved, ultimately the printing company will have to move out of the city altogether. I just want to say that these are real people. These are real situations.

We have children dying in drive-by shootings, we have individuals who cannot get jobs, we have despair, bad health, we have the lack of security, the lack of safety that comes with a hollow core of the inner cities of America, in part because we have had a regulatory red line around the inner cities, which have basically said you cannot develop in here because this stuff is old. These buildings were used in previous settings where we did not have the environmental requirements that we have now, and because they were used in those previous settings, they are full of liabilities for business. They are full of liabilities for industry. They are full of liabilities for producers.

As a result, if you want to be an industry, you want to be in business, you want to be a producer, you cannot be here, but have to go to suburbia, in the green fields, and we find ourselves hollowing out our cities. We find young people in despair turning to all kinds of things.

Under the guise of regulations that would abate noise, for instance, we get the noise of crack cocaine. We hear the slam of the slammer door. We hear the shot of the pistol. We hear the wail of the family in the wake of the ambulance that carries away the individual who has been wounded or killed.

It is time to recognize that this economics redlining of the inner city that results from hyperregulation is costing us our ability to deliver jobs.

Make no mistake about it, make no mistake about it, we all want to have a healthier environment. But you cannot tell somebody who has a 1 in 25 chance of being shot as an unemployed person on the street in one of the urban cores, you cannot tell someone that you are keeping the jobs out of there because there is a 1 in 1 million chance they might have some respiratory problem as a result of some kind of atmospheric nonattainment.

We have to weigh the real impacts of what we are seeing happen here. The real impact of regulations in many urban centers is a redlining against developments, a redlining against industry. It is a redlining against opportunity.

When we take development opportunities and industry out of the communities, we have joblessness, lawlessness, hopelessness. Those are conditions that are far greater threats to the safety, security and general well-being of the population than many of the things we have sought to regulate.

What is the answer? How can we address this problem? What is it that we ought to do? I am suggesting in the Urban Regulatory Relief Zone Act that we should allow mayors of urban areas to convene economic development commissions that could make application for the waiver of specific Federal regulations when those regulations preclude jobs and development, when they preclude opportunities, when they result in the hopelessness, despair, and danger in the inner city, when they really result in a lower standard of longevity, a lower standard of health, a lower standard of safety, a lower standard of security.

When the impact of regulation has an inverse consequence—instead of promoting health, security and safety, it results in the absence of jobs and opportunities in the core of our inner cities and destroys the potential for health, security and safety—the economic development commissions of these areas ought simply to be able to make application to the Federal agencies and say to those Federal agencies, we ask for a waiver, because the imposition of the requirement in our community has the anomalous effect, has the opposite effect, of what it should have. It is causing our children to be shot. It is causing our children to drop out of school when they see no opportunity. We need to waive some of these regulations when the waiver would, in fact, elevate the health, the safety, and the employment opportunities, when the waiver would help people live longer and more productive lives than the imposition.

So the Urban Regulatory Relief Zone Act which I have proposed would simply be a way of saying it is time to make good on what our intention is. If our intention in regulation is to improve the health, safety, security, and general well-being of individuals in our urban centers where the impact of regulation has frequently been the opposite, we need to say ''Let's give those urban centers the chance, through economic development commissions, to make application to have those regulatory provisions waived.''

I think we all understand that we do not want to have the potential for the waiver of regulatory protections just willy-nilly. If regulations are decent or good or important, we do not want to waive them lightly.

I think it is important to note if you had those kind of economic development commissions that the law provides for, and you have the kind of public notice that the law provides for, that the people who represent the affected population would only submit such applications for waiver when they were convinced that as a result of the waiver there would be an elevation of the life expectancy, an elevation of the health and safety, an elevation of the security, the quality of life of the individuals.

Finally, this application, which under the proposed enactment would go to the Office of Management and Budget and then be referred to the various agencies, would be finally acted on by the agency. If the agency concluded, in spite of the application, that there was a substantial danger to the health and safety of the occupants, it could persist in denying relief. It could say no to the waiver. It would give authority for the EPA or other areas of regulation to say, ''The impact of our regulation in that community is hurting people, not helping. The impact of our regulation is shortening people's lives. It is decreasing their health, not expanding their health. It is causing hopelessness and despair. It is causing young people to drop out of school because they see no opportunity.'' Yes, we ought to, in this circumstance, waive these technical requirements and, as a result, bring real benefit to the citizens of that particular area.

I believe this is a real opportunity. We have discriminated dramatically against urban residents with regulation. Regulations, invariably, are designed to make things that were done in the past illegal, to make things that happened in a previous way of doing business inappropriate.

We regulate to say you cannot do things that way anymore. There are some good reasons for that. But the institutions that worked on these things in the past are in the midst of our great cities. We have basically said you cannot work there anymore. We are reaping the harvest. We are reaping the

harvest because 40 percent of all adult men in our distressed inner cities did not work in a year that was studied recently, while a significant number worked only sporadically or part time.

Today, half of all the residents of the distressed neighborhoods in our big cities live below the federally defined poverty threshold. In 1993, that was $14,763 for a family of four. The reason for that is, in part, we have said to businesses, we have a regulatory framework that really provides incentives for you to get out of here, for you to go to that green field in suburbia, go to a new place, leave the city alone.

We provided incentives. We have not done it purposely. We have not done it knowingly. But we have provided real incentives for people to leave the urban centers of America. And, when we leave them empty we leave the people there empty. We leave them in peril. We leave them in distress. We leave them in despair. And ultimately we leave some of them in a situation from which they can never escape.

There are those who say, ''Well, you don't want to have a standard for safety or an environment that is lower in the city than it is in some other area. There has to be environmental justice.'' I believe in environmental justice. I believe everyone should have an equal chance at the good life that we want to enjoy. But I believe that when our requirements are shortening the lives of individuals instead of extending them, when our requirements are pulling the rug out from under the health of our population, we ought to think carefully about whether or not they are having the right effect.

I do not have the studies in my hand right now, but I think virtually all of us in this Chamber understand that when we have looked at health statistics people who are employed tend to be healthier than people who are unemployed, and people who are employed tend to be safer than people who are unemployed. There is very little that is more dangerous in an employment setting in this country than there is to be standing unemployed on the street corners of some of our urban centers.

I believe we ought to look hard at the way in which regulation has drawn a red line around the core of America's cities, the way regulation has basically said, ''Do not invest here. Do not produce here. Do not do business here. You cannot get a job here.'' I think we ought to say to ourselves, let us allow these cities to make an evaluation. When they come to a conclusion that the general well-being of the people—when they come to the conclusion that the health and safety of the inner-city residents—would be benefited by a waiver, let us let them apply. And let us give the agency the authority to grant that waiver application, so we can bring jobs and opportunity and hope back to the center of our cities.

I believe one of the next items which we will be moving toward in the debate here in the U.S. Senate will be an item which is referred to as welfare reform. We desperately need welfare reform. But, frankly, as much as we need welfare reform we need opportunity for individuals, because we are going to ask people to go to work and we are going to expect them to go to work. But how can we ask people in our inner cities to go to work, how can we expect them to go to work, if we continue to develop a regulatory framework which redlines the inner city and says there cannot be jobs here, there cannot be opportunity here?

Mr. President, I believe it is time for us to grant relief to the urban centers, to give them a level playing field, to give them a chance to attract business and industry that is consistent with the health and safety, the longevity, and the security of the residents of that area. Our regulatory framework has not served them well.

They have paid the higher prices that we have all talked about in the last few weeks, talking about regulation here in this Chamber. But they have also paid a tremendously higher price than just the increased cost of goods that come from regulation. They have paid the price of joblessness and they have paid the price of hopelessness. They have paid the price of looking into the eyes of their young people who have no ambition because they cannot see an opportunity in their neighborhood. That is a substantially greater price than the $600 billion a year that it is estimated that regulation costs us in America. Oh, yes, they have paid their share of the $600 billion. But the opportunity costs—in the very heart of American urban centers has been a tremendous opportunity cost, and it is one which we can ill-afford to ignore.

So I rise this evening in the midst of the debate on regulatory reform to say we must recognize the unique circumstances of American cities. We must give these neighborhoods at the core of America, the mature cities of America, the opportunity to have relief when, as a matter of fact, the imposition of regulations now achieves a purpose absolutely contrary to the purpose for which the law was enacted which provided for regulations. It shortens lives, impairs safety, ruins health, and destroys opportunity.

It is time for the Urban Regulatory Relief Zone Act, and I hope we have an opportunity to include that in our dealings with regulatory relief during our deliberations this week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, for about the last couple of hours, 2½ hours, a number of our colleagues on both sides of the aisle have been negotiating on S. 343, the regulatory reform bill. Those negotiations are still underway. So as not to waste time, I have suggested to the distinguished Democratic leader, Senator DASCHLE, that we now proceed to consideration of S. 21, which is the Bosnian resolution, and I am hopeful we can reach that agreement and then we would continue on S. 21 and hopefully finish it tomorrow. That would give the Members who are in the negotiations on S. 343 all day tomorrow to see if they can come to some agreement on three or four important issues.

I also have asked consent that, if they reach an agreement, that I can come back to S. 343 and maybe reach some agreement on completion of that bill or complete that measure. So as soon as I hear from the Democratic leader I can advise my colleagues on the schedule for the balance of the evening.

If we cannot get the agreement, then we will come back on S. 343. There are a number of amendments that can be offered tonight, including the pending amendment by the Senator from Missouri. Senator ASHCROFT has an amendment pending. So if we cannot reach an agreement, we will come back on S. 343 tonight and the Senator's amendment will be the pending amendment, as I understand it.

There are other amendments that can be offered tonight on S. 343, so I am not at liberty to say whether or not there will be votes. But we will advise our colleagues as soon as we can.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GORTON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, there has been extensive consultation between the distinguished majority leader and the Democratic leader, and we do have a unanimous-consent request to propound.

I ask unanimous consent that the pending bill, S. 343, be temporarily laid aside; that the Foreign Relations Committee be discharged from further consideration of S. 21; and that the Senate turn to its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, I reserve the right to object, and it is certainly not my intention to object. Let me make one observation and note a couple of concerns, as we propound the second part of this request.

The observation is this: those who are engaged in trying to work through the remaining differences on the regulation reform bill reported to me just moments ago that real progress has been made this afternoon. I think that we have been able to report progress from time to time.

I think in all sincerity, some effort has been made on both sides to continue to narrow the differences, and we made significant progress over the course of the last several hours. The time that has been spent since about 3 o'clock this afternoon has been well spent.

As it relates to this resolution, I think the recommendation made by the majority leader and the majority whip is a good one. I think laying the bill aside will accommodate the negotiations, and I think that it is safe to assume that we are going to continue to make progress over the course of the next couple of days. We certainly do not relegate any rights to continue to object to closure on the legislation, should we find that progress has not been sufficient. But I think we need to recognize that, indeed, efforts are being made on both sides to try to accommodate the concerns. It is in that context that we want to allow that process to continue.

Mr. LOTT. Mr. President, we certainly appreciate the comments of the distinguished Democratic leader.

I further ask unanimous consent then that the Senate resume S. 343 after the disposition of S. 21, as amended, if amended, and no call for the regular order serve to displace S. 21, except one made by the majority leader after notification of the minority leader, and if a call for the regular order is made, there be 1 hour for debate to be equally divided in the usual form to be followed by the third cloture vote on the Dole-Johnston substitute, and the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, again, reserving the right to object, now I simply want to state the two concerns I mentioned a moment ago. First, we have an understanding that over the course of tomorrow morning and early afternoon that there be no votes on amendments or on the resolution itself. A number of Senators have been invited down to the White House to discuss this matter. I think it would be very helpful if that discussion can take place prior to the time we are called upon to make any decisions.

Second, should we find the need to come back to S. 21, it would be very helpful if we had plenty of notice. The majority leader and the majority whip have both indicated that, indeed, it would be their desire to give us plenty of notice.

So it is with those two understandings that we have no objection and encourage Senators to comply with this unanimous-consent agreement and get on with the debate relating to the Dole resolution.

The PRESIDING OFFICER. Is the entire request proposed?

Mr. LOTT. It has been propounded, and if the Chair would like to go ahead and do the ruling, I have one further comment I would like to make.

The PRESIDING OFFICER. Is there objection to the entire unanimous-consent request?

Mr. FEINGOLD. Mr. President, reserving the right to object. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Mississippi has the floor. Does he yield for the purpose of——

Mr. LOTT. First, I was not aware that the Senator had a problem that he wanted to discuss with the minority leader. While that is being done, I would like to respond to a couple of points that the minority leader made.

First, as is always the custom, the majority leader would certainly give notice to the other side, to the minority leader, before any votes would occur. That is always done. Certainly, they would give them the usual courtesy that would be expected in that regard.

Second, I know, also, that the majority leader—while I have not discussed it with him—would want to honor any request for consideration of a meeting that might be occurring on this particular matter with the administration. So I know that the minority leader has already been assured of that. I would like to reconfirm that.

Also, I would like to note, before the Chair rules, that I have been notified that we do not expect any more recorded votes tonight. The majority leader has sent that word. We had discussed that earlier with him and with the minority leader. So the Members should be on notice that there will be no more recorded votes tonight.

I have no further requests. I thank the minority leader for his indulgence. I would like to see if we can get a ruling on the unanimous-consent request.

Mr. FEINGOLD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, I want to notify the membership that if this agreement cannot be reached, it would be the intent of the leader to go on with the pending legislation, and then we could expect additional recorded votes tonight. I will be glad to yield to the minority leader.

Mr. DASCHLE. Mr. President, I was not aware of the concern of the distinguished Senator from Wisconsin with regard to the regulatory reform bill. We have an hour prior to the time we would go to the third cloture motion under this unanimous consent agreement. He would like to be protected to offer a nongermane amendment relating to a sense-of-the-Senate resolution prior to that time. I think if we could accommodate the Senator from Wisconsin, perhaps we could accommodate this unanimous-consent agreement.

Mr. LOTT. Mr. President, in view of this development and seeing the Senator from North Carolina seeking recognition, while some further discussion takes place, I will withhold that unanimous consent request for now and yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

THE ARMS EMBARGO AGAINST BOSNIA

Mr. HELMS. Mr. President, my reaction to this agreement which may soon be entered into is: At long last. On the first day that the Senate this year accepted bills and resolutions to be introduced, this resolution was introduced by the distinguished majority leader with some of the rest of us as cosponsors. The Foreign Relations Committee, of which I am chairman, has not acted on this resolution, at the specific request of the majority leader and others. But I am delighted that finally we are confronting the questions that have been raised about the delay in the resolution.

In short, Mr. President, it is high time for the Senate to acknowledge what is already perfectly clear to any objective observer: The U.N. peacekeeping effort in Bosnia is an abject failure.

The Bosnian Serbs have certainly known this for a long time, as has the beleaguered Bosnian Muslim government. Yet, the United Nations persists in a policy that, at best, has given the appearance of action while, in fact, allowing the slow-motion genocide of Bosnian Muslims.

Lest the President of the United States need reminding, along with the leaders of our European allies, Bosnia was recognized as an independent nation 3 years ago. Commensurate with that status is the explicit right of self-defense. For 3 years, the Bosnian Serbs have pursued an aggressive campaign, aided and abetted by the Government of Serbia. Irrefutable evidence, such as the integrated air defense of these two brutal forces, demonstrates that this is truly a war of aggression being waged by Serbia. How any democratic government can continue to justify the arms embargo against Bosnia on either moral or legal grounds escapes me. It absolutely escapes me.

So-called safe areas are being overrun, U.N. peacekeepers have been taken hostage, humanitarian assistance convoys are either blocked or being looted by Bosnian Serb fighters, and Sarajevo airport has been closed for 3 months. Despite this deteriorating situation, the U.S. Government persists in supporting the illusion of peacekeeping—as if there is any peace to keep in that part of the world. Most recently, President Clinton has stated his intention to spend an additional $95 million on the U.N. so-called rapid reaction force in order to perpetuate this failed policy. Under the current rules

of engagement, that force will do nothing to confront Serb aggression.

Mr. President, it would be an exaggeration to suggest that the situation in Bosnia is at a diplomatic standstill. It is moving backward. It appears that the closest the Western Powers can get to a negotiated solution is to reward the Serbian dictator who started this entire war by easing the sanctions against his country. Even this effort—which is an embarrassment to the United States—has fallen short.

So in recognition of this failure, and as chairman of the Senate Foreign Relations Committee, I declare that it is time for us to take a step which should have happened 3 years ago. We must approve this legislation to lift the arms embargo against the Bosnians and allow those people to defend themselves.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I will repeat my earlier unanimous consent request. I understand that we need to start this whole routine over again. I am going to have two unanimous-consent requests.

First, I ask unanimous consent that the pending bill, S. 343, be temporarily laid aside and the Foreign Relations Committee be discharged from further consideration of S. 21, and the Senate turn to its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Mr. President, I further ask that the Senate resume S. 343 after the disposition of S. 21, as amended, if amended, and no call for the regular order serve to displace S. 21, except one made by the majority leader, after notification of the minority leader—and he can be assured that he would get proper notification on that—and if a call for the regular order is made, there be 1 hour for debate, to be equally divided in the usual form, to be followed by the third cloture vote on the Dole-Johnston substitute, and the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER (Mr. SANTORUM). Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I do not want to confuse the matter any more, so I waited until after the unanimous consent request was proffered.

Let me make sure my colleagues are clear as to what the circumstances are now. I have had the opportunity to consult with the distinguished Senator from Wisconsin. It is my intention to protect his right to offer a sense-of-the-Senate resolution either before cloture or after cloture, if a cloture motion is required; or if no cloture motion is required, we will negotiate with the majority to ensure that the distinguished Senator from Wisconsin has an opportunity to raise the issue that he hopes to address through this sense-of-the-Senate resolution. I appreciate his cooperation in this regard, and as a result, we are now able to go forward.

I think this is a good solution to the matter, and I appreciate everyone's consideration and cooperation.

Mr. LOTT. Mr. President, I want to reiterate, in view of the unanimous consent agreement that we did reach, that was the last issue of the day in terms of recorded votes. There will be no recorded votes until tomorrow when an agreement is reached on when the next vote will be scheduled. There will be no further recorded votes tonight.

I yield the floor.

BOSNIA AND HERZEGOVINA SELF-DEFENSE ACT

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 21) to terminate the United States arms embargo applicable to the government of Bosnia and Herzegovina.

The Senate proceeded to consider the bill.

Mr. FEINGOLD. Mr. President, let me take this opportunity to thank the Senator from Mississippi and the Democratic leader for their help on resolving the issue.

I did not want to offer the sense-of-the-Senate resolution during the core of the debate on the substance of the bill. I do think it is relevant to this bill. I want to thank them for their cooperation.

Mr. LOTT. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, I should like to take this occasion to speak strongly in favor of S. 21, the majority leader's resolution on Bosnia.

Mr. President, we have now, for more than 3 years, watched—and I use that word advisedly ''watched''—the ongoing tragedy of Bosnia. The aggressions, the rapes, the cold-blooded murders, the ethnic cleansing, which has accompanied the dismemberment of a nation, recognized as a nation, and a member of the United Nations.

We have an administration which has constantly threatened action, and every bit as constantly walked away from that action when its bluff was called.

We have a U.N. protective force which has protected no one but the aggressors. A force dispatched to Bosnia to provide some kind of safety for the victims of aggression has shown itself unable to do so time after time and place after place. Whether around Sarajevo, whether in the isolated areas of refuge, whether in the northwest part of the country—its fate has been the same.

Its fate has either been to protect the Bosnian Serb aggressors against any kind of military action on the part of the United Nations, no matter how modest and ineffective by its very presence and by the ease with which the Bosnian Serbs can take the U.N. personnel as hostage; or alternatively, as was the case just 10 days ago, as an entity which disarmed the defenders of these enclaves and then provided absolutely no defense or support for essentially unarmed victims who now, themselves, are the latest example of the victims of the Serbs' ethnic cleansing.

Mr. President, the former President of the United States, George Bush, was wrong in enforcing an arms embargo against the Bosnians. President Clinton has repeated that and has been wrong to enforce that arms embargo against the Bosnians.

As recently as lunch time today, the caucuses of both parties listened to the same tired presentation from the Secretary of State, and in this case from the Chairman of the Joint Chiefs of Staff, that we have heard for this entire 3 years. That somehow or another to do something, change our policy, to allow those who wish to defend themselves to do so, would lead to some even worse disaster, the taking of more hostages among the U.N. forces, to more deaths and ethnic displacement on the part of the Bosnians.

Yet, the use of this excuse, Mr. President, has resulted in 3 years of violence and displacement and ethnic cleansing and an end to the belief of the United Nations to act effectively in connection with a catastrophe of this sort, and undercutting of the ability of NATO, and most significantly, a lack of belief in the United States of America.

Mr. President, it is simply time to end that bankrupt policy. The proposal that the majority leader has brought to the Senate ends the embargo on one of two conditions: a decision by the United Nations or by the countries supplying troops to the United Nations in Bosnia to withdraw; or a request from the legal Government of Bosnia that the United States lift the arms embargo and a notification to the U.N. Security Council that it has requested that those forces leave.

Mr. President, that is putting the ultimate fate of the Republic of Bosnia squarely in the hands of its own elected

Government, which is exactly where it should be. There is a very real possibility that if the troops of that Government can obtain arms even remotely equivalent to those possessed by the aggressors, that they can defend their independence and recover some of the country wrongfully lost to them. And it is way past time, way past time that we allow that decision to be made by the people who have been the victims of this aggression for 3 long years.

The U.N. protective force is not protecting anyone, including itself. It should be gone. Our arms embargo punishes no one except for the victims of aggression. It is simply time that it be brought to a close. The partial and midlevel threats that are being made by this administration will risk the loss of American lives but will not, under any circumstances, change the situation on the ground. What could be more clear, Mr. President, than the proposition that we should not risk the lives of our own men and women in uniform unless their goal is important to the United States and has some definite and worthy policy to be defended?

Nothing that we have heard from the administration about its plans meets those simple tests. If we are willing to do nothing to end this aggression ourselves, we at least should no longer be complicit to its continued success. We should be willing to allow the victims to defend themselves. We should end the arms embargo. We should encourage the present forces from the United Nations to leave. We should arm the Bosnians. And I am convinced, under those circumstances, their chances of regaining the semblance of a country and reaching a peace through some kind of strength will be greatly enhanced.

There is no perfect solution to this catastrophe. But the solution of allowing the victims to defend themselves, to fight for their own freedom, is the least bad of all the solutions before us. And I am profoundly convinced it is the only moral answer to this question.

I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The majority leader.

Mr. DOLE. Mr. President, I thank the Senator from Washington for his statement and for his support.

Mr. President, I am pleased to be joined by the distinguished Senator from Connecticut, Senator LIEBERMAN, and a long list of bipartisan cosponsors as we again try to lift the illegal and unjust arms embargo on Bosnia and Herzegovina. The legislation we are bringing up today is a modified version of the bill we introduced in January of this year. S. 21 is the number. This bill lifts the United States arms embargo after the withdrawal of United Nations troops from Bosnia and Herzegovina.

Before we start to discuss this legislation I want to make clear: This debate is not just about Bosnia. This is not just about a small European country under attack. This debate is about American leadership and American principles, about NATO strength and credibility, about our place in history.

It was just about a year ago that the Senate last voted to lift the arms embargo on Bosnia. That vote was 58–42. However, in conference a compromise was worked out by the distinguished Senator from Georgia, Senator NUNN, and the administration's representative Chuck Redman. It urged the President to introduce a resolution to lift the arms embargo in the U.N. Security Council if the Bosnian Serbs did not sign the July 1994 contact group plan by October 15. The compromise language also provided that if the Serbs did not sign the plan by November 15, the United States would cease enforcing the arms embargo. Finally, the compromise urged that in the event of Bosnian Serb attacks on U.N. safe areas, the President introduce and support a resolution in the Security Council to provide the Bosnians with defensive weapons to defend these areas.

Now it is a year later. The Bosnian Serbs have still not signed the July 1994 contact group peace plan; the administration has still not taken up a resolution in the U.N. Security Council to lift the arms embargo; and the Bosnian Serbs are about to run over another U.N. safe haven—the second in 2 weeks.

Mr. President, the administration argued last year that lifting the arms embargo would lead to the fall of the three safe havens in the east. The first of these three enclaves has fallen under U.N. watch—with NATO planes overhead. Today NATO planes are buzzing above Zepa, which is about to fall.

Mr. President, all this has occurred in the absence of lifting the arms embargo. Indeed, it has occurred because the arms embargo is preventing the only people willing to fight to defend the Bosnian people from being able to do so—and that is the Bosnians themselves; not the U.N. forces, but the Bosnian Government Forces—Moslems, Croats, and Serbs are willing to die to defend their families, their homes, and their multi-ethnic country.

Last year the administration also made the argument that lifting the arms embargo immediately would endanger allied forces. In this modified Dole-Lieberman legislation we are not lifting the United States embargo until after those countries contributing to UNPROFOR who want to leave, have left.

The administration has also claimed that lifting the embargo would Americanize the war. This is the most difficult argument to understand. The Clinton administration has pledged 25,000 American troops for Bosnia if there is peace. The Clinton administration has pledged 25,000 American troops for Bosnia if there is withdrawal. And the Clinton administration is considering escalating the American involvement for transport and close air support of UNPROFOR forces. Let us not forget, and American Air Force pilot, Scott O'Grady, was recently shot down. In light of such commitments, it is hard to take administration arguments over Americanization seriously. As the Prime Minister of Bosnia said, lifting the arms embargo will not Americanize the war, it will Bosnianize the war—by putting the future of Bosnia back in Bosnian hands, where it should have been for the last couple of years or more.

A more recent concern raised by some is that the withdrawal may take more than 12 weeks. In that regard, this legislation includes a renewable Presidential waiver providing for an additional 30 days should additional time be necessary for the safety and successful completion of the withdrawal operation.

As I mentioned earlier, each time the Senate has taken up this legislation we have been told by the administration that this is not the right time. We have waited. The Bosnians have waited—and they have died.

The bottom line is that the approach pursued by the administration, like that of the Bush administration, is a total failure. The question is whether or not we will continue to contribute U.S. dollars, prestige, and credibility to this catastrophe or change course.

Mr. President, there are no perfect options. There are no easy answers. We now know what has not worked—relying on the U.N. forces to protect the Bosnians. It seems to me that we owe it to the Bosnians and our own American principles of justice and fairness to let the Bosnians defend themselves, and I believe the American people understand this and will support it.

Let me make it clear, as I attempted to do earlier today, we are not talking about more American involvement. We are not talking about American ground troops. We are talking about lifting the arms embargo—maybe helping to train Bosnians, maybe helping to supply weapons, but that could be done in safe areas. And if they secure Russian weapons, which they are already familiar with, there will be very little training necessary.

Also keep in mind that in many cases the Bosnians surrendered the only heavy weapons they had because they were going to be in safe havens. As I suggested, one of the safe havens has been overrun, and another about to be overrun, and the third, Gorazde, is in peril.

I also want to make it clear, because I think there is always a tendency for some to say: Oh, this is politics, this is BOB DOLE, Republican, because we have a Democratic President, the record will reflect that during the Bush administration I think the same two Senators raised this question. We were critical of the Bush administration. I remember talking to Ambassador Zimmerman time after time. I remember calling him and discussing it with him when he was in Yugoslavia, because we were told then that if we did not do something—and I am not talking again about military force; I am talking

about sending a word of caution to Mr. Milosevic, the leader of the Serbs, the President of Serbia—this is precisely what would happen.

So this is not a Dole resolution. This is not a Lieberman resolution. This is an action by the Senate, Republicans and Democrats, such as the two of us, Mr. HELMS, Mr. THURMOND, Mr. BIDEN, Mr. D'AMATO, Mr. MCCAIN, Mr. FEINGOLD, Mr. WARNER, Mr. HATCH, Mr. KYL, Mr. MOYNIHAN, Mr. STEVENS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. COVERDELL, Mr. PACKWOOD, Mr. MURKOWSKI, Mr. SPECTER, and others, so there is strong, broad bipartisan support.

It is not a conservative matter. It is not a liberal matter. It is a moral issue of whether we will again in this century witness ethnic cleansing, genocide, call it what you will, and do nothing. In this case, all we need to do, as we were reminded again by the Bosnian Foreign Minister today, is to lift the arms embargo. As he said, ''We are willing to die for our country.'' They are not asking us to do that, not asking anybody else to do that. And I know the British do not want to lift the arms embargo. I know President Chirac, the new French President, has other ideas. The British and French cannot seem to get together.

I know the Secretary of State told the Democrat policy luncheon today this is not the time, timing is terrible. Well, that is always the case. It is never the time. It seems to me just the opposite. This is a perfect time. It would seem to me the administration would want us to pass this resolution. It has to go to conference, has to be worked out. It is going to take quite a while—10 days, 30 days, who knows—before it comes back and before it becomes law. And then the President could tell the French and the British that the options are fewer and fewer as far as America is concerned and our involvement is concerned.

So I really hope that we can complete action on this resolution tomorrow. I know the White House will want to try to dissuade some from voting for the resolution. That is certainly a right they have. But I would also suggest this is precisely the very same action the President advocated when he first came to the White House—even before he came to the White House—lift the arms embargo. He also was supporting air strikes.

So it is not that we have figured out some way to be on the other side of President Clinton and have brought this issue to the floor to embarrass the President. We are precisely where the President was before he was elected President, as a candidate, and where he was after he was elected. And I recall a meeting in the White House in the spring of 1993 where Democrats and Republicans came together and we talked about lifting the arms embargo and air strikes.

That has been a long, long time. I do not know how many thousands of people have suffered, how many thousands have died, how many murdered and raped, how many children have gone without food because we did nothing. And then we said, well, this is a European problem; let the Europeans handle it. And then we had the U.N. Protection Forces.

Again, I commend the courage and bravery of every one of those young men, and maybe women in some cases, from all the different countries who are there as U.N. Protection Forces. They are there with good intent. Unfortunately, their good intent has turned into in effect being a buffer for the Serbs. Now the U.N. Protection Forces have found they cannot protect themselves, and they cannot protect the people in the safe havens, and they cannot protect the refugees. In fact, if you watched television the other night, they had a barbed wire entanglement separating the U.N. forces from the refugees so they would not come together.

It seems to me that it is pretty clear. My own view is the British do not want to be humiliated by withdrawing. I have talked to John Major in his office. He is very persuasive. Somehow he believes if we just continue to stay there, this is going to end. And with a new French President, he is being a bit more aggressive. He thinks they ought to do something. So now he wants us to become involved with helicopter gunships and other ways we transport French and other U.N. Protection Forces into the area.

In my view, that would be a mistake, but that may be debated. There may be an amendment to do that before we complete action on the bill.

Finally, it just seems to me it is the right thing to do. It was a year ago. It was before that. The House passed this—not the same legislation—by a vote of 318 to 99, over 3 to 1. I hope we have at least 70 votes or more in the Senate; bipartisan votes, nonpartisan, whatever you like.

I believe we have made progress because we have been cautious. We have respected the timing, and we have delayed from time to time to see if they could not complete negotiation, they could not reach some agreement. But I believe now is the time for us to proceed and to send a signal to the Serbs and, yes, to the British, to the French, but more particularly the Bosnians, that somebody in America, in this case the Senate and the House of Representatives, understands their concerns, and we are willing to support their request that an independent nation, a member of the United Nations, has the right of self-defense as spelled out in article 51 of the U.N. Charter.

That is all this is about. It is not complicated. You can raise all the horror stories. You can give us all the scenarios that might happen. We were told by the foreign minister today there will be no effort by the Moslems to stop the U.N. Protection Forces from leaving. We were also told that there are only 30 U.N. personnel in Serb occupied areas, so it should not take 25,000 American troops to help extricate members of the U.N. Protection Forces.

So as we begin the debate, I again commend my colleagues. I hope that the distinguished Senator from Rhode Island, who I know maybe supports us in his heart, would find it in his heart to support us all the way because he is a very important Member of this body, and I know he feels, as some, maybe he has some reservations, but this is, as he certainly knows, not a partisan effort on behalf of the majority leader in this instance.

AMENDMENT NO. 1801

Mr. DOLE. Mr. President, I send the amendment to the desk in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. HELMS, Mr. THURMOND, Mr. BIDEN, Mr. D'AMATO, Mr. MCCAIN, Mr. FEINGOLD, Mr. WARNER, Mr. HATCH, Mr. KYL, Mr. MOYNIHAN, Mr. STEVENS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. COVERDELL, Mr. PACKWOOD, Mr. MURKOWSKI, and Mr. SPECTER, proposes an amendment numbered 1801.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bosnia and Herzegovia Self-Defense Act of 1995''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) For the reasons stated in section 520 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), the Congress has found that continued application of an international arms embargo to the Government of Bosnia and Herzegovina contravenes that Government's inherent right of individual or collective self-defense under Article 51 of the United National Charter and therefore is inconsistent with international law.

(2) The United States has not formally sought multilateral support for terminating the arms embargo against Bosnia and Herzegovina through a vote on a United Nations Security Council resolution since the enactment of section 1404 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337).

(3) The United Nations Security Council has not taken measures necessary to maintain international peace and security in Bosnia and Herzegovina since the aggression against that country began in April 1992.

SEC. 3. STATEMENT OF SUPPORT.

The Congress supports the efforts of the Government of the Republic of Bosnia and Herzegovina—

(1) to defend its people and the territory of the Republic;

(2) to preserve the sovereignty, independence, and territorial integrity of the Republic; and

(3) to bring about a peaceful, just, fair, viable, and sustainable settlement of the conflict in Bosnia and Herzegovina.

SEC. 4. TERMINATION OF ARMS EMBARGO.

(a) TERMINATION.—The President shall terminate the United States arms embargo of the Government of Bosnia and Herzegovina, as provided in subsection (b), following—

(1) receipt by the United States Government of a request from the Government of Bosnia and Herzegovina for termination of the United States arms embargo and submission by the Government of Bosnia and Herzegovina, in exercise of its sovereign rights as a nation, of a request to the United Nations Security Council for the departure of UNPROFOR from Bosnia and Herzegovina; or

(2) a decision by the United Nations Security Council, or decisions by countries contributing forces to UNPROFOR, to withdraw UNPROFOR from Bosnia and Herzegovina.

(b) IMPLEMENTATION OF TERMINATION.—The President may implement termination of the United States arms embargo of the Government of Bosnia and Herzegovina pursuant to subsection (a) prior to the date of completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina, but shall, subject to subsection (c), implement termination of the embargo pursuant to that subsection no later than the earlier of—

(1) the date of completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina; or

(2) the date which is 12 weeks after the date of submission by the Government of Bosnia and Herzegovina of a request to the United Nations Security Council for the departure of UNPROFOR from Bosnia and Herzegovina.

(c) PRESIDENTIAL WAIVER AUTHORITY.—If the President determines and reports in advance to Congress that the safety, security, and successful completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina in accordance with subsection (b)(2) requires more time than the period provided for in that subsection, the President may extend the time period available under subsection (b)(2) for implementing termination of the United States arms embargo of the Government of Bosnia and Herzegovina for a period of up to 30 days. The authority in this subsection may be exercised to extend the time period available under subsection (b)(2) for more than one 30-day period.

(d) PRESIDENTIAL REPORTS.—Within 7 days of the commencement of the withdrawal of UNPROFOR from Bosnia and Herzegovina, and every 14 days thereafter, the President shall report in writing to the President pro tempore of the Senate and the Speaker of the House of Representatives on the status and estimated date of completion of the withdrawal operation. If any such report includes an estimated date of completion of the withdrawal which is later than 12 weeks after commencement of the withdrawal operation, the report shall include the operational reasons which prevent the completion of the withdrawal within 12 weeks of commencement.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be interpreted as authorization for deployment of United States forces in the territory of Bosnia and Herzegovina for any purpose, including training, support, or delivery of military equipment.

(f) DEFINITIONS.—As used in this section—

(1) the term ''United States arms embargo of the Government of Bosnia and Herzegovina'' means the application to the Government of Bosnia and Herzegovina of—

(A) the policy adopted July 10, 1991, and published in the Federal Register of July 19, 1991 (58 FR 33322) under the heading ''Suspension of Munitions Export Licenses to Yugoslavia''; and

(B) any similar policy being applied by the United States Government as of the date of completion of withdrawal of UNPROFOR personnel from Bosnia and Herzegovina, pursuant to which approval is denied for transfers of defense articles and defense services to the former Yugoslavia; and

(2) the term ''completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina'' means the departure from the territory of Bosnia and Herzegovina of substantially all personnel participating in UNPROFOR and substantially all other personnel assisting in their withdrawal, within a reasonable period of time, without regard to whether the withdrawal was initiated pursuant to a request by the Government of Bosnia and Herzegovina, a decision by the United Nations Security Council, or decisions by countries contributing forces to UNPROFOR, but the term does not include such personnel as may remain in Bosnia and Herzegovina pursuant to an agreement between the Government of Bosnia and Herzegovina and the government of any country providing such personnel.

PRIVILEGE OF THE FLOOR

Mr. DOLE. Mr. President, I also ask unanimous consent that a legislative fellow in my office, Mr. Ronald A. Marks, be allowed on the Senate floor for the duration of the Senate action on S. 21, the Bosnia and Herzegovina Self-Defense Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

I yield the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank the majority leader for his kind words.

Mr. President, once again, the Senate is debating legislation to lift the arms embargo against Bosnia-Hercegovina. Since the Senate first took up this issue in January 1994, I have voted against every attempt to force the United States to lift the embargo unilaterally. I must say that I now find this would be an extremely difficult vote to cast.

The fall of a U.N. protected safe haven—and the impending fall of a second—is a dreadful human tragedy. The terrible images of tens of thousands of Moslem refugees fleeing Serb aggression make us want to find a quick and easy solution to the crisis, but I am afraid there are no easy answers. A Senate vote to lift the arms embargo unilaterally may seem cost-free, but I believe there are serious downsides that could actually make the situation worse.

The legislation before us says that the lifting of the embargo shall occur after UNPROFOR personnel have withdrawn or 12 weeks after the Bosnian Government asks U.N. troops to leave, whichever comes first. We should be honest about what we are debating here. This bill, if passed, will actually trigger a U.N. withdrawal from Bosnia. I would remind my colleagues that the United States has committed to helping our allies withdraw from Bosnia as part of a NATO effort. So, in essence, by passing this bill, we are precipitating the commitment of up to 25,000 United States troops to Bosnia to help with that withdrawal.

It is indeed time for our President, along with our U.N. and NATO allies to consider the future of the United Nations in Bosnia. They know that if the United Nations were to pull out altogether, many areas of Bosnia which are now stable and well supplied due to the U.N. presence would likely face a humanitarian disaster. This is particularly true in central Bosnia where the U.N. presence has fostered a peaceful federation between the Bosnian Croats and Moslems, who until February 1994, had been engaged in a fierce war. The President and our NATO allies must balance that potential catastrophe against the current tragedy which has led many to call for a complete U.N. pullout.

As we speak, the administration and our allies are grappling with that difficult issue. General Shalikashvili met with his counterparts in London regarding this matter this past weekend; British Foreign Secretary Malcolm Rifkind is in Washington today to discuss this issue; and later this week, Secretary Christopher and Secretary Perry will travel to London for negotiations with their European counterparts.

Clearly, I would have hoped we would wait to know the results of these important meetings and await our President's recommendation on the future of UNPROFOR and the role of the United States before embarking on this debate. I believe that Europe bears the brunt of the burden for dealing with the Bosnia crisis. Indeed the Europeans acknowledge this fact and are contributing the bulk of the troops to the U.N. effort. We have no troops on the ground, and that is as it should be. The U.S. Senate, therefore should not take unilateral action that would actually precipitate a U.N. withdrawal. In the end, a decision may have to be made to withdraw U.N. troops, but I do not believe the Senate should make that decision.

I would add that the Bosnian Government, if it wished, could ask the United Nations to leave at any time. But it has not done so. Yet this bill would put the U.S. Senate on record as endorsing, indeed hastening a withdrawal.

A unilateral lifting of the arms embargo after U.N. troops are withdrawn will inevitably be perceived as the beginning of a United States decision to go it alone in Bosnia. It is naive to think we can unilaterally lift the arms embargo, and then walk away. We instead would assume responsibility for Bosnia not only in terms of our moral obligation, but in practical terms as well. If we lift the embargo, who will supply the weapons? How will weapons be delivered? Who will train the Bosnians in using the weapons? The proponents of this bill will argue that it places no obligations on the United States, but everyone knows the Bosnian Government will look to us.

Lifting the embargo without international support would increase American responsibility for the outcome of the conflict. Delivering weapons to Bosnia would likely require sending in United States personnel. Granted, this legislation states that nothing should be construed as authorizing the deployment of United States forces to Bosnia-Hercegovina for any purpose. But I want to emphasize that this would be a U.S. decision to dismantle the embargo. I do not see how we can lift the embargo on our own without sending in the personnel and without providing the wherewithal to carry out the policy.

A unilateral lifting of the embargo—be it now or after U.N. troops are withdrawn—would put the United States in the position of abrogating a U.N. Security Council resolution, and in essence, breaking international law. The embargo is in place as a result of a binding U.N. Security Council resolution and can only be abrogated by a subsequent U.N. Security Council action. A unilateral lifting of the arms embargo would set a dangerous precedent. Other countries could choose to ignore Security Council resolutions that we consider important—such as the embargo against Iraq and sanctions against Libya and Serbia.

In April, the Washington Post reported that Iran was engaging in embargo-busting by supplying plane loads of weapons and military supplies to Bosnian Government forces. If the United States were to lift the embargo unilaterally, we would joint Iran in embargo busting. I would ask my colleagues: Do you want to be in that company? Is Iran a responsible player in the international community?

The answer, of course, is no. If the United States were to break the embargo on its own, we would destroy our credibility as a trustworthy leader in international affairs. A unilateral lifting of the arms embargo would undoubtedly strain our relations with our NATO allies and undermine our standing in other international negotiations completely unrelated to the Bosnian tragedy.

After U.N. troops are safely withdrawn, lifting the embargo multilaterally may indeed be the best course of action. If and when UNPROFOR does withdraw, I believe we should make sure we know where our allies stand on lifting the embargo. Whether or not to lift the embargo should be a multilateral decision. We should not go it alone.

I acknowledge that I see merit in some of the arguments of the amendment's proponents. This is a difficult problem that cuts across partisan lines and that slices to the heart of issues related to U.S. influence and power abroad. We all want to do something in response to the terrible pictures of the old people being wheeled out of eastern Bosnia in wheelbarrows or the frightful sight of the 20-year-old Bosnian hanging from a tree. I am just not convinced, however that voting for this bill will alleviate that suffering. Indeed, I am afraid that we might make matters worse.

We are, as public servants, called upon to exercise our best judgment on this very difficult issue and this is what I intend to do.

I yield the floor.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank the chair.

Mr. President, first I would like to request unanimous consent that Frederic S. Baron, a Pearson Fellow in my office, be permitted floor privileges for the duration of the debate on S. 21?

The PRESIDING OFFICER. Without objection, so ordered.

Mr. LIEBERMAN. I thank the Chair.

Mr. President, I am honored to join with the distinguished majority leader, the Senator from Kansas [Mr. DOLE], and many others in both parties in introducing this substitute, S. 21.

I do want to indicate at the outset, though, this has been a frustrating path that we have walked together. It has been an honor to walk it with Senator DOLE and to say that this is a path we have walked together in the interest of a strong policy in Bosnia and a fair policy, which is to say one that will arm the Bosnians who have been deprived of their right of self-defense by international action, in which we have participated. This effort, together with Senator DOLE and others, has been done, as he said a few moments ago, on a totally bipartisan, which is to say, nonpartisan, basis, which is the way in which American foreign policy has been at its finest hours.

I specifically point out that Senator DOLE and I began this effort during the previous Republican administration of President Bush, expressing our frustration and opposition to the failure of leadership and the continued imposition of the arms embargo.

Mr. President, we have been here before. By my calculation, we have been here at least seven times before. Each time, excuses are given why this is the wrong time to lift the arms embargo against the Bosnian Government. Explanations are given about what the consequences might be, let alone why the whole idea of lifting the embargo is wrong.

We have continued to believe that the heart of any equitable policy in the former Yugoslavia is to allow both sides to be able to defend themselves. History divided the former Yugoslavia in such a way that only one side, namely, Serbia and its clients, its agents in Croatia and in Bosnia, were left with the warmaking capacity of the former Yugoslavia. Bosnia was left with nothing.

This denial of this fundamental right of self-defense, which each of us can feel in a personal sense, certainly, as we watch the horrors, the atrocities that have gone on once again in Bosnia in the last couple of weeks and see families divided—mothers separated from children, husbands from wives, see women taken off without explanation with God knows what being done to them, men being herded away, young men, men of military age being herded away. These are the human horrific results of this policy.

People have argued against the idea of raising the arms embargo each time we have brought it to this floor, arguing more against it than for an alternative policy. Today we come back, as Senator DOLE has said, not saying that this is the perfect policy, not saying that any policy in a complicated situation is perfect or guaranteed to succeed, but saying with clarity that the current policy has been a terrible failure, has brought suffering and pain and death to the people of Bosnia. But more than that, it has victimized, along with the people of Bosnia, the world's best hopes for order and morality—the United States, NATO, and the United Nations, each suffering significant, deep damage to our credibility, to our status, to our legitimacy in the world.

When the voices and institutions and nations of strength and authority fail to act or act with ambivalence in a way that sends a message of weakness and outlaws continue to be aggressors, then the results are obvious, and you do not have to be a Ph.D. in diplomacy to understand this. If outlaws are marauding in a city in our country and forces of law do not stop them, they will keep marauding until they reach each one of us. And that, in essence, I fear, is what has happened over the last 3 years of inaction by the world communities in Bosnia.

Mr. President, I have a point of view which I feel very strongly about what Bosnia was before this conflict and what has brought us to this point. I have spoken of it before on this floor, and I will just speak to it briefly today.

There are those who like to dismiss or diminish the conflict in the former Yugoslavia and, in some sense, thereby to wash our hands of any responsibility, remove us from any involvement on the basis of this allegation: ''These people have been fighting for centuries.'' There is a hint here that these people are somehow slightly less than human. ''They continue to fight; why should we get involved?''

There are two realities. One is that civilizations, cultural and religious, have met in the Balkans. That is the history over the centuries, and there have been conflicts. But the reality is that, in Bosnia particularly, a strong and healthy multiethnic culture and nationality developed.

Somebody said to me, in Sarajevo before this terrible war, it was thought to be offensive for one person to ask another in Sarajevo what their ethnic origin was: Are you a Moslem? Are you a Serb? Are you a Croat? No, they were

Bosnians. This was a great, flourishing multiethnic culture.

Second, there is a clear course that I see as I look at the history of this region over the last 6 or 7 years, and that is of an intentional, concerted effort through aggression by Serbians operating out of Belgrade under the leadership of Slobodan Milosevic to create a greater Serbia.

Since 1988, beginning with the takeover of the political machinery in Montenegro and Vojvodina, the illegal suppression of the legal Government of Kosova, which has a large Albanian majority, suppressed, continuing to be victims of harassment and abuse and worse. That occurred in 1989.

Then the mobilization of nationalist feelings in Serbian public polls;

The slow-moving constitutional coup against the Federal Presidency;

The Serbian economic blockade against Croatia and Slovenia in late 1990;

The theft by Serbia that year of billions of dinars from the Federal budget, destroying the Federal economic reform program;

And then the incitement and arming by Serbia out of Belgrade of Serb minorities in Croatia and Bosnia during 1990 and 1991.

That is how we got to where we are. This is no accident. This is no continuation of centuries and centuries of constant fighting. This is a decision made in Belgrade by a leader and a group around him to incite nationalism, to destroy the multicultural, multiethnic society in Bosnia and to take advantage of the instability that existed after the cold war to create a greater Serbia.

What about the embargo that we are debating? Where did that come from? Mr. President, this is not, as some may think, an act of international law. It is an act of policy created and adopted by the Security Council of the United Nations.

The resolution introduced creating an arms embargo, No. 713, was considered by the Security Council at Belgrade's request. Why? Well, I believe it is obvious. Because the forces in Belgrade knew that they had the monopoly and the warmaking capacity, the arms factories, and the weapons that had already been constructed of the former Yugoslavia. Applying an arms embargo put their enemies, the targets of their aggression, at a profound disadvantage.

So at Belgrade's request, in September 1991, the United Nations Security Council adopted this arms embargo, later to be carried out by the member nations, including our own—in this case, by an Executive order issued by President Bush. The world satisfied itself that this was a means to limit the conflict in the former Yugoslavia by stopping the flow of arms. What innocence. What naivete.

In April 1992, Bosnia was recognized as a new state, independent and separate from Yugoslavia. And on May 22, 1992, it was admitted as a member state to the United Nations. Yet, still the embargo that had been applied on the former Yugoslavia, despite the glaring conflict between this application and Bosnia's right of self defense under international law, was applied to Bosnia. That is how we got on the road to where we are now.

In 1992, international television crews gained access to what I could only describe as concentration camps that were being operated by the Serbs, where they were herding Moslems into the camps. We witnessed the emaciated bodies, and we saw evidence of this incredible phrase—''ethnic cleansing.'' There were 200,000 killed in this war. A couple of million refugees. The world rolls up in horror at the sight of these figures in the concentration camps and the stories of systematic rape—rape as an instrument of war. Serbs were coming into towns not only clearing them out of the Moslems, but grabbing women and raping them, and taking men off to the camps, or slaughtering them on sight.

The world cried out for a response. The Western nations were not prepared to really stand up to the aggression. So what did we do? We sent in the United Nations—which was not good, ultimately, for the people of Bosnia, not good for the United Nations—presumably to perform a humanitarian role. But little by little, that mission crept, to enforce the denied flight zone, enforce and protect the safe havens, sending these brave soldiers wearing the blue helmets of the United Nations in to keep a peace that never was, and putting them into combat positions without the weapons with which to defend themselves.

I heard the other day—and I have not had a chance to check this, but I believe it—that more soldiers wearing U.N. uniforms have been killed in Bosnia than in the gulf war. They are heroes. We sent them effectively on a mission impossible. Several times, confronting the failure of this policy, the increasing way in which the U.N. troops began to be not only an excuse for Western inaction in the face of Serbian aggression, but began to be a cover for Serbian aggression within Bosnia. Every time we would come here in the early years in this effort to lift the embargo, people would say: You cannot do it. If we lift the embargo, the Serbs will seize the U.N. personnel as hostages.

Well, we have not lifted the embargo, and the Serbs have seized U.N. personnel as hostages, and the killing of the Moslems in Bosnia continues.

Mr. President, when we came to the floor January 27, 1994, we passed a sense-of-the-Senate resolution calling on the President to terminate the arms embargo. That measure passed 87 to 9. It was only a sense of the Senate. But the Senate spoke. The world sat idly by, the arms embargo was not lifted, and the people of Bosnia continued to be—using that dreadfully sanitized term—ethnically cleansed, which is to say ripped from their homes, raped, and murdered.

In May 1994, the Senate again considered, and this time passed, two measures. One was a measure that I cosponsored with Senator DOLE, requiring the United States to unilaterally terminate the arms embargo upon the request of the Bosnian Government. That passed 50 to 49. On that day—I suppose in a way that only the Senate of the United States could do—we also passed an amendment offered by Senator NUNN and the previous majority leader, Senator MITCHELL, requiring the President to solicit a multilateral lift of the embargo and to consult with Congress if that did not occur. Again, the Senate spoke. The world sat idly by, the arms embargo was not lifted, and the people of Bosnia were ethnically cleansed, ripped from their homes, raped, and murdered.

Again, in July and August 1994, the Senate addressed the issue of lifting the arms embargo, voted and passed measures calling for its termination. This time the votes rose. The last of these votes was 58 to 42, passing an amendment offered by Senator DOLE and myself to the defense appropriations bill, which called for the lifting of the embargo no later than November 15, 1994. On each of those occasions, the Senate spoke. The world sat idly by, the arms embargo was not lifted, and the people of Bosnia were ethnically cleansed, ripped from their homes, raped, and murdered.

Here we are. It is July 1995. One of the other arguments that was made to us in these many debates I have just described is that if we lifted the arms embargo, the Serbs would seize the safe havens, particularly in the east of Bosnia. Well, we have not lifted the arms embargo and, as we know, the Serbs have seized the safe havens—at a dreadful human cost for the Bosnians.

Srebrenica has fallen. Zepa is under siege now. Failure of our policy could not be clearer. It is time, finally, to act. Again, as in 1992 when the concentration camps were discovered, the world is aroused by these painful sights of human suffering from Bosnia. This is the moment for us, finally, to act—to act against aggression, against immorality, to give the people of this country—the victims—the weapons with which to defend themselves.

Mr. President, the Bosnians have been the greatest victims of the current policy that the West has followed for the last 3½ years, a policy of irresoluteness, at best, a policy of weakness, at worst.

But the Bosnians are not the only victims. We have suffered, as well. When aggression is met by ambivalence, and aggression is met by no response—which has been the case throughout the war in Bosnia—ultimately, we are all going to suffer. We saw it happen just a short while ago directly to America, when Captain O'Grady's F–16 was shot down.

I have gone over this event in some detail with the folks at the Pentagon just to make clear that I understood exactly what happened. Here is what I have learned. We know that the Serbs in Bosnia were able to pick up the F–16 flying over Bosnia on an integrated radar air defense system that has installations in Bosnia, controlled by the Bosnian Serbs, but goes back to Belgrade and Serbia, as well. But what is most infuriating about this is that it is clear to those who are in a position to know that when the Serbian air defense system sighted Captain O'Grady's F–16, they knew it was an American F–16. This may not be known to those who are not involved, and Members of the Chamber, and those who may be watching this debate, but this is a sophisticated air defense system which can look at this plane and determine that it is an American F–16. And not just that. It was able to determine—the Serbs on the ground—that this F–16 was not flying an aggressive flight mission. It was not out to drop weapons, bombs, on Serbian targets, as has happened all too infrequently in this conflict. But that this plane was on a nonaggressive patrol mission, part of Operation Deny Flight, to keep Serb planes on the ground, not in the air.

Seeing it was an American plane, knowing it was on a nonaggressive mission, the Bosnian Serbs intentionally shot it down. It is only by the grace of God and by the depth of his own extraordinary courage that Captain O'Grady is alive today.

Understand the outrageous arrogance, the disrespect for law, the disrespect for the greatest power in the world, the United States, that they showed. These Bosnian Serbs shot down our plane.

What have they paid for that aggression? Nothing. What does that invite? It invites them to attack and overrun a safe haven. Meanwhile Bosnian Army weapons are being held in a U.N. compound. U.N. Dutch soldiers—courageous, effectively unarmed—light arms is all they had. Then the Serbs followed with atrocities against the civilian population.

So we have suffered. We have suffered in the United States. We will continue to suffer, as will the rule of law and the rule of morality, if we stand by and allow this aggression of the Serbs to go unresponded to. Mr. President, that is what this S. 21 proposal is all about.

In 1992, President Clinton supported a policy of lifting the arms embargo and striking from the air. In 1993, Secretary Christopher, in the spring of that year, May I believe, went to Europe to advocate this policy. Apparently, our allies and Britain and France argued against it. That was the end of it.

I honestly believe if we implemented that policy at that point and employed NATO air power, which we could have done against the Serbs with minimal risk to NATO and American personnel, this war would have been over and there would have been a reasonable peace that both sides could have accepted. That is history. It has not happened.

But now, though the hour is late in Bosnia and the situation ever more difficult and complicated, there is no opportunity to get the warring parties to the peace table, unless the Serbs pay some price for their aggression.

It seems to me that our last hope here, our last best hope, is to lift the arms embargo, give the Bosnians the weapons with which to defend themselves, their families, their country, and use NATO air power to strike at Serbian targets. I would not rule anything out.

Let the Serbs worry about where and when we will strike. In Bosnia against Serbian targets or in Serbia, which continues to arm, equip, and actually send Serbian regular soldiers into Bosnia alongside the Bosnian Serbs.

There is strong evidence that in the fall of Srebrenica there were special forces from the Serbian Army, the so-called Serbian Army fighting side by side with the Bosnian Serbs.

This is our last best hope, not just for the people of Bosnia who paid a terrible price, but for the rule of law and order in Europe and throughout the world.

It is the last best hope for NATO to show that in a situation that is complicated and yet where aggression is clear, it will act outside the context of the Soviet-American cold war conflict; that there is still meaning to NATO in this great alliance.

It is the last best hope for the United Nations to restore some measure of credibility to itself as an instrument of hope to victims of aggression and oppression throughout the world.

Mr. President, there will be an extended debate tomorrow, I am sure, on this amendment. I hope and pray that what we will have is the resounding bipartisan majority, the overwhelming majority that Senator DOLE referred to earlier.

Of itself, this is an event that occurs here on the floor of the Senate, far removed from the suffering on the ground in Bosnia, unable effectively to immediately, even it is passed overwhelmingly, bring assistance to the Bosnians, but it will bring them hope.

More than that, I hope that it will combine with what is happening on the ground, which is to say the failure of the U.N. mission, to either lead to a more aggressive use of air power by NATO, as Secretary Perry has spoken of, hopefully, encouragingly to me, in the last 3 or 4 days. If not, then the withdrawal of the U.N. forces, the arming of the Bosnians, and the continued use of NATO air power.

Mr. President, I thank the Chair for his patience. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRIST). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, when we see a photograph of a young woman who has hanged herself in a forest in Bosnia, because she prefers death to the kind of violations which the Bosnian Serbs are inflicting on young women like herself who are Bosnian Moslems; and where we see confirmed reports where the Bosnian Serbs walk into safe havens and root out 11-year-old children who are males, and slit their throats and pile them in heaps; and when we see documents filed by the International Criminal Tribunal for the former Yugoslavia where the indictments read—horrifying prose—about torture and sexual mutilation, in which a prisoner is forced to ''bite off the prisoner's testicle,'' resulting in his death; as horrible as these events are to recite, they are minuscule compared to the horror of what is going on in Bosnia today, and the acts of savagery, brutality, and atrocities being committed by the Bosnian Serbs on the Bosnian Moslems.

The words ''ethnic cleansing'' hardly begin to describe what is going on in that atrocious situation.

Meanwhile, the democracies of the world, the West, have permitted this atrocious situation to continue. I believe that the time has long passed when there has to be a change in United States policy on how we deal with Bosnia. The time has long passed when there has to be a change in NATO policy on how we deal with Bosnia. And the time has long passed when there has to be a change in U.N. policy, on how we deal with Bosnia.

I believe that the resolution offered tonight is a minimal step forward to try to implement a new policy which is urgently required. It is a minimal step to lift the arms embargo, to let the Bosnian Moslems defend themselves, as they have every right to do under article 51 of the U.N. Charter.

Action by the Senate, by the Congress, by the Government of the United States—depending upon what happens here in the House, the President's reaction, the veto, a possible override or perhaps the impetus of a strong statement by the U.S. Senate—will cause a marked change in U.S. policy and what has to be U.S. leadership. There has been a vacuum in U.S. leadership and I think that is conceded on all sides. It is not a political matter. Republicans were critical of President Bush for the arms embargo. The Senator from Connecticut, Senator LIEBERMAN, has been critical of the President, of his own party. Senator KERREY, of Nebraska, who is vice chairman of the Senate Intelligence Committee, a committee which I chair, has been critical of his own President and is quoted, ''The President's leadership has been awful. He campaigned criticizing President George Bush for not doing enough and

implied that we were going to take the side of the Bosnian Moslems.''

I ask unanimous consent that this newsclip be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. So we are not talking about a matter that is political. The reality is that our President is inexperienced and inattentive and indecisive and ineffective. It is time that leadership came from the United States Senate, as this body had to start the leadership to get the United States forces out of Somalia when we passed a resolution cutting off the funds, as we have the authority to do under our appropriations power.

I submit that leadership by the U.S. Senate may well have the effect of profoundly changing, not only U.S. policy but NATO policy and U.N. policy as well. U.N. peacekeepers have had a ''Mission Impossible'' in Bosnia, because there is no peace to keep. I submit the U.N. peacekeepers ought to be withdrawn. That is indispensable before the arms embargo is lifted, so that the UN peacekeepers are out of harm's way.

That would then put us in a position to have an option of massive bombing. There are arguments both ways, as to whether the bombing would be sufficient. There is a substantial basis for saying if the bombing were sufficiently intense and if the Bosnian Moslems were armed, that a balance of power could be restored there. We subjected Baghdad to relentless bombing during the gulf war, for months in advance of the invasion.

A question is raised as to whether there ought to be consideration to retaliating against the cities of the Bosnian Serbs. I am not prepared to answer that question. That issue has been raised, as to whether the doctrine of proportionality makes any sense when the only reaction to the attacks of the Bosnian Serbs is a proportional counterattack. That leaves them to call the shots at every turn, because, under the doctrine of proportionality, which has been adopted by the United Nations, the Bosnian Serbs are not at risk. And there is a real question as to whether that policy ought to be abandoned.

Then you have the dual key issue, where every decision has to be approved by the United Nations and NATO. There is very strong reason to believe that the decisions ought not to be made by the United Nations from their record up to the present time. You have the courageous leadership of the French President, Chirac, who says he is prepared to act and he is prepared to take some forceful steps. He asks for support from the United States, with helicopters, for some air cover. I am not sure whether that is a wise course, but that is a request which ought to be considered.

I am opposed to United States participation in a ground war in Bosnia. I do not think we should lend U.S. troops to any such effort. But in terms of air strikes, which are not entirely without risk as we know—one pilot, Captain O'Grady, was downed there—helicopters may or may not be committed. There are also risks involved. But it is something which ought to be considered.

I believe, Mr. President, if we have forceful leadership coming from the United States—and when I say ''Mr. President,'' those who may be watching on C–SPAN2 should know that is our formal way of addressing the Presiding Officer of this body, not the President of the United States—but, if the Senate takes a forceful stand, that could have an impact on leading President Clinton to change his position and it may well be with leadership which comes out of the U.S. Senate that we will change the policy of President Clinton and together we can change the policy of NATO. We can change the policy of the United Nations. We can change the policy of France and Britain, if we undertake what French President Chirac has wanted to accomplish.

Mr. President, when we see the genocide and the atrocities that are going on in Bosnia, we really wonder about America's response in another era. I recall vividly my father recounting his experiences as an American doughboy in the American Expeditionary Force in France in World War I. My father came to this country from Russia to escape the czar's heel. He was not willing to go to Siberia to fight for the czar. But he was ready, willing, able, and really anxious to go to France to fight for America, as he put it, as I remember hearing him talk about it growing up, ''to make the world safe for democracy.'' I know my brother and brother-in-law served in World War II against the scourge of the Nazis and the Japanese after the attack on Pearl Harbor. And I served stateside during the Korean war.

We have a different attitude today, Mr. President, in the United States, as to the extent we are willing to stand up for honor and for values and to stop the kind of atrocities which are going on in Bosnia. But I do believe that the entire policy of the Clinton administration needs reevaluation from top to bottom, and the resolution which is pending right now, to lift the arms embargo, is a step in the right direction. I hope that this will start a debate in the United States Senate so that we can consider the very serious questions which are in issue here, and we can consider the values of the United States, which we so proudly proclaim, and consider acting upon those values and supporting them when we see the kind of atrocities which are going on in Bosnia. And we know the values articulated by the NATO alliance, and we know the values articulated by the United Nations. And it is time we put some action behind those words.

The first step on the action is a step to unilaterally lift the arms embargo. If we move ahead with consultation—and it will take some time—and there is a real question as to whether there would be sufficient votes to pass the resolution and a greater question as to whether there would be sufficient votes to override a Presidential veto, perhaps we will find that we can change the policy of the United Nations and that we will end up acting in concert with France, Great Britain, and the other NATO powers.

But there is a very important issue, Mr. President, which we cannot duck any longer. I am glad to see the resolution offered because I think it is time we took a look at what is going on in Bosnia and look in the mirror to see how we feel about the kinds of values we articulate and the kinds of actions we are prepared to back up.

It is a matter which cries out for leadership. But it is a very difficult matter because of the obvious reluctance and reticence of anyone to see ground troops deployed in Bosnia or to see any casualties inflicted on American fighting men and women. But these are issues which need to be considered. And the American people need to know what is going on there so there can be a public reaction to the kinds of atrocities which are going on—where young women are hanging themselves rather than to be subjected to the atrocities of the Bosnian Serbs and lads taken out in great numbers and having their throats slit apparently so that they will not grow into another generation to pose some theoretical problem for the Serbs; to have the ethnic cleansing, and to have an entire genocide of an entire people.

So I support the pending resolution.

EXHIBIT 1

KERREY CRITICIZES THE PRESIDENT

(By David C. Beeder)

WASHINGTON.—Sen. Bob Kerrey, D-Neb., accused President Clinton Tuesday of a lack of leadership in Bosnia's civil war.

''The president's leadership has been awful,'' Kerrey said in an interview. ''He campaigned criticizing (President George) Bush for not doing enough and implied we were going to take the side of the Bosnian Muslims.'' Since then, Kerrey said, Clinton has been ''sending a message that's pretty strong that the cavalry is coming up over the hill.''

In a press conference later, Kerrey said Senate Majority Leader Bob Dole, R-Kan., ''is closer to being right'' with his plan to disregard a U.N. arms embargo that has handicapped the Bosnian government.

Kerrey said he could support such a plan if it required other countries' approval and if it first called for withdrawal of all U.N. peacekeepers.

At the same time, Kerrey said, the United States must be ''careful not to respond emotionally to scenes of violence and atrocities'' against one side or the other in the civil war, saying the conflict did not consist of ''a single issue where the Muslims are right and the Serbs are wrong.''

Kerrey's fellow Nebraska senator, Democrat J.J. Exon, urged caution in responding to events in Bosnia.

''With all the atrocities that are taking place over there, there is a tendency to come unglued,'' he said.

Exon said he was concerned about a request that the United States send helicopters into combat zones to deliver U.N. reinforcement troops.

''The more people they put in there the more difficult it will be to extricate them,'' Exon said, noting that Clinton has pledged to send U.S. ground troops to help if the U.N. decides it must withdraw from Bosnia.

Exon said he has always opposed sending U.S. ground troops.

MORNING BUSINESS

REPORT ON THE NATIONAL EMERGENCY WITH SERBIA AND MONTENEGRO—MESSAGE FROM THE PRESIDENT—PM 67

THE PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On May 30, 1992, in Executive Order No. 12808, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States arising from actions and policies of the Governments of Serbia and Montenegro, acting under the name of the Socialist Federal Republic of Yugoslavia or the Federal Republic of Yugoslavia, in their involvement in and support for groups attempting to seize territory in Croatia and the Republic of Bosnia and Herzegovina by force and violence utilizing, in part, the forces of the so-called Yugoslav National Army (57 FR 23299, June 2, 1992). I expanded the national emergency in Executive Order No. 12934 of October 25, 1994, to address the actions and policies of the Bosnian Serb forces and the authorities in the territory of the Republic of Bosnia and Herzegovina that they control. The present report is submitted pursuant to 50 U.S.C. 1641(c) and 1703(c). It discusses Administration actions and expenses directly related to the exercise of powers and authorities conferred by the declaration of a national emergency in Executive Order No. 12808 and Executive Order No. 12934 and to expanded sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (the ''FRY (S/M)'') and the Bosnian Serbs contained in Executive Order No. 12810 of June 5, 1992 (57 FR 24347, June 9, 1992), Executive Order No. 12831 of January 15, 1993 (58 FR 5253, Jan. 21, 1993), Executive Order No. 12846 of April 25, 1993 (58 FR 25771, April 27, 1993), and Executive Order No. 12934 of October 25, 1994 (59 FR 54117, October 27, 1994).

1. Executive Order No. 12808 blocked all property and interests in property of the Governments of Serbia and Montenegro, or held in the name of the former Government of the Socialist Federal Republic of Yugoslavia or the Government of the Federal Republic of Yugoslavia, then or thereafter located in the United States or within the possession or control of U.S. persons, including their overseas branches.

Subsequently, Executive Order No. 12810 expanded U.S. actions to implement in the United States the United Nations sanctions against the FRY (S/M) adopted in United Nations Security Council (''UNSC'') Resolution 757 of May 30, 1992. In addition to reaffirming the blocking of FRY (S/M) Government property, this order prohibited transactions with respect to the FRY (S/M) involving imports, exports, dealing in FRY-origin property, air and sea transportation, contract performance, funds transfers, activity promoting importation or exportation or dealings in property, and official sports, scientific, technical, or other cultural representation of, or sponsorship by, the FRY (S/M) in the United States.

Executive Order No. 12810 exempted from trade restrictions (1) transshipments through the FRY (S/M), and (2) activities related to the United Nations Protection Force (''UNPROFOR''), the Conference on Yugoslavia, or the European Community Monitor Mission.

On January 15, 1993, President Bush issued Executive Order No. 12831 to implement new sanctions contained in U.N. Security Council Resolution 787 of November 16, 1992. The order revoked the exemption for transshipments through the FRY (S/M) contained in Executive Order No. 12810, prohibited transactions within the United States or by a U.S. person relating to FRY (S/M) vessels and vessels in which a majority or controlling interest is held by a person or entity in, or operating from, the FRY (S/M), and stated that all such vessels shall be considered as vessels of the FRY (S/M), regardless of the flag under which they sail.

On April 25, 1993, I issued Executive Order No. 12846 to implement in the United States the sanctions adopted in UNSC Resolution 820 of April 17, 1993. That resolution called on the Bosnian Serbs to accept the Vance-Owen peace plan for the Republic of Bosnia and Herzegovina and, if they failed to do so by April 26, called on member states to take additional measures to tighten the embargo against the FRY (S/M) and Serbian controlled areas of the Republic of Bosnia and Herzegovina and the United Nations Protected Areas in Croatia. Effective April 26, 1993, the order blocked all property and interests in property of commercial, industrial, or public utility undertakings or entities organized or located in the FRY (S/M), including property and interests in property of entities (wherever organized or located) owned or controlled by such undertakings or entities, that are or thereafter come within the possession or control of U.S. persons.

On October 25, 1994, in view of UNSC Resolution 942 of September 23, 1994, I issued Executive Order No. 12934 in order to take additional steps with respect to the crisis in the former Yugoslavia. (59 FR 54117, October 27, 1994.) Executive Order No. 12934 expands the scope of the national emergency declared in Executive Order No. 12808 to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Bosnian Serb forces and the authorities in the territory in the Republic of Bosnia and Herzegovina that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina.

The Executive order blocks all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons (including their overseas branches) of: (1) the Bosnian Serb military and paramilitary forces and the authorities in areas of the Republic of Bosnia and Herzegovina under the control of those forces; (2) any entity, including any commercial, industrial, or public utility undertaking, organized or located in those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; (3) any entity, wherever organized or located, which is owned or controlled directly or indirectly by any person in, or resident in, those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces; and (4) any person acting for or on behalf of any person within the scope of the above definitions.

The Executive order also prohibits the provision or exportation of services to those areas of the Republic of Bosnia and Herzegovina under the control of Bosnian Serb forces, or to any person for the purpose of any business carried on in those areas, either from the United States or by a U.S. person. The order also prohibits the entry of any U.S.-flagged vessel, other than a U.S. naval vessel, into the riverine ports of those areas of the Republic of Bosnia and Herzegovina under the control of Bosnia Serb forces. Finally, any transaction by any U.S. person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in the order is prohibited. Executive Order No. 12934 became effective at 11:59 p.m., e.d.t., on October 25, 1994.

2. The declaration of the national emergency on May 30, 1992, was made pursuant to the authority vested in the President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3 of the United States Code. The emergency

declaration was reported to the Congress on May 30, 1992, pursuant to section 204(b) of the International Emergency Economic Powers Act (50 U.S.C. 1703(b)) and the expansion of that National Emergency under the same authorities was reported to the Congress on October 25, 1994. The additional sanctions set forth in related Executive orders were imposed pursuant to the authority vested in the President by the Constitution and laws of the United States, including the statutes cited above, section 1114 of the Federal Aviation Act (49 U.S.C. App. 1514), and section 5 of the United Nations Participation Act (22 U.S.C. 287c).

3. There have been no amendments to the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations (the ''Regulations''), 31 C.F.R. Part 585, since the last report. The Treasury Department had previously published 853 names in the Federal Register on November 17, 1994 (59 FR 59460), as part of a comprehensive listing of all blocked persons and specially designated nationals (''SDNs'') of the FRY (S/M). This list identified individuals and entities determined by the Department of the Treasury to be owned or controlled by or acting for or on behalf of the Government of the FRY (S/M), persons in the FRY (S/M), or entities located or organized in or controlled from the FRY (S/M). All prohibitions in the Regulations pertaining to the Government of the FRY (S/M) apply to the entities and individuals identified. U.S. persons, on notice of the status of such blocked persons and specially designated nationals, are prohibited from entering into transactions with them, or transactions in which they have an interest, unless otherwise exempted or authorized pursuant to the Regulations.

On February 22, 1995, pursuant to Executive Order 12934 and the Regulations, Treasury identified 85 individuals as leaders of the Bosnian Serb forces or civilian authorities in the territories in the Republic of Bosnia and Herzegovina that they control. Also on February 22, Treasury designated 19 individuals and 23 companies as SDNs of the FRY (S/M). These designations include FRY (S/M)-connected companies around the world that are being directed from Cyprus, two Cypriot-owned firms that have had a central role in helping establish and sustain sanctions-evading FRY (S/M) front companies in Cyprus, and the head of the FRY (S/M)'s Central Bank who is also the architect of the FRY (S/M) economic program.

Additionally, on March 13, 1995, Treasury named 32 firms and eight individuals that are part of the Karic Brothers' family network of companies as SDNs of the FRY (S/M). Their enterprises span the globe and are especially active in former East Bloc countries. These additions and amendments, published in the Federal Register on April 18, 1995 (60 FR 19448), bring the current total of Blocked Entities and SDNs of the FRY (S/M) to 938 and the total number of individuals identified as leaders of the Bosnian Serb military or paramilitary forces or civilian authorities in the territories in the Republic of Bosnia and Herzegovina that they control to 85. A copy of the notice is attached.

Treasury's blocking authority as applied to FRY (S/M) subsidiaries and vessels in the United States has been challenged in court. In *Milena Ship Management Company, Ltd.* v. *Newcomb*, 804 F Supp. 846, 855, and 859 (E.D.L.A. 1992) *aff'd*, 995 F.2d 620 (5th Cir. 1993), *cert.* denied, 114 S.Ct. 877 (1994), involving five ships owned or controlled by FRY (S/M) entities blocked in various U.S. ports, the blocking authority as applied to these vessels was upheld. In *IPT Company, Inc.* v. *United States Department of the Treasury*, No. 92 CIV 5542 (S.D.N.Y. 1994), the district court also upheld the blocking authority as applied to the property of a Yugoslav subsidiary located in the United States. The latter case is currently on appeal to the Second Circuit.

4. Over the past 6 months, the Departments of State and Treasury have worked closely with European Union (the ''EU'') member states and other U.N. member nations to coordinate implementation of the U.N. sanctions against the FRY (S/M). This has included visits by assessment teams formed under the auspices of the United States, the EU, and the Organization for Security and Cooperation in Europe (the ''OSCE'') to states bordering on Serbia and Montenegro; continued deployment of OSCE sanctions assistance missions (''SAMs'') to Albania, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Hungary, Romania, and Ukraine to assist in monitoring land and Danube River traffic; support for the International Conference on the Former Yugoslavia (''ICFY'') monitoring missions along the Serbia-Montenegro-Bosnia border; bilateral contacts between the United States and other countries for the purpose of tightening financial and trade restrictions on the FRY (S/M); and ongoing multilateral meetings by financial sanctions enforcement authorities from various countries to coordinate enforcement efforts and to exchange technical information.

5. In accordance with licensing policy and the Regulations, FAC has exercised its authority to license certain specific transactions with respect to the FRY (S/M) that are consistent with U.S. foreign policy and the Security Council sanctions. During the reporting period, FAC has issued 109 specific licenses regarding transactions pertaining to the FRY (S/M) or assets it owns or controls, bringing the total as of April 25, 1995, to 930. Specific licenses have been issued (1) for payment to U.S. or third-country secured creditors, under certain narrowly-defined circumstances, for pre-embargo import and export transactions; (2) for legal representation or advice to the Government of the FRY (S/M) or FRY (S/M)—located or controlled entities; (3) for the liquidation or protection of tangible assets of subsidiaries of FRY (S/M)—located or controlled firms located in the U.S.; (4) for limited transactions related to FRY (S/M) diplomatic representation in Washington and New York; (S) for patent, trademark and copyright protection in the FRY (S/M) not involving payment to the FRY (S/M) Government; (6) for certain communications, news media, and travel-related transactions; (7) for the payment of crews' wages, vessel maintenance, and emergency supplies for FRY (S/M) controlled ships blocked in the United States; (8) for the removal from the FRY (S/M), or protection within the FRY (S/M), of certain property owned and controlled by U.S. entities; (9) to assist the United Nations in its relief operations and the activities of the U.N. Protection Force; and (10) for payment from funds outside the United States where a third country has licensed the transaction in accordance with U.N. sanctions. Pursuant to U.S. regulations implementing UNSC Resolutions, specific licenses have also been issued to authorize exportation of food, medicine, and supplies intended for humanitarian purposes in the FRY (S/M).

During the past 6 months, FAC has continued to oversee the liquidation of tangible assets of the 15 U.S. subsidiaries of entities organized in the FRY (S/M). Subsequent to the issuance of Executive Order No. 12846, all operating licenses issued for these U.S.-located Serbian or Montenegrin subsidiaries or joint ventures were revoked, and the net proceeds of the liquidation of their assets placed in blocked accounts.

In order to reduce the drain on blocked assets caused by continuing to rent commercial space, FAC arranged to have the blocked personality, files, and records of the two Serbian banking institutions in New York moved to secure storage. The personality is being liquidated, with the net proceeds placed in blocked accounts.

Following the sale of the M/V Kapetan Martinovic in January 1995, five Yugoslav-owned vessels remain blocked in the United States. Approval of the UNSC's Serbian sanctions Committee was sought and obtained for the sale of the M/V Kapetan Martinovic (and the M/V Bor, which was sold in June 1994) based on U.S. assurances that the sale would comply with four basic conditions, which assure that both U.S. and U.N. sanctions objectives with respect to the FRY (S/M) are met: (1) the sale will be for fair market value; (2) the sale will result in a complete divestiture of any interest of the FRY (S/M) (or of commercial interests located in or controlled from the FRY (S/M) in the vessel; (3) the sale would result in no economic benefit to the FRY (S/M) (or commercial interests located in or controlled from the FRY (S/M)); and (4) the net proceeds of the sale (the gross proceeds less the costs of sale normally paid by the seller) will

be placed in a blocked account in the United States. Negotiations for the sale of the M/V Bar, now blocked in New Orleans, are underway and are likely to be concluded prior to my next report.

Other than the M/V Bar, the four remaining Yugoslav-owned vessels are beneficially owned by Jugooceanija, Plovidba of Kotor, Montenegro, and managed by Milena Ship Management Co. Ltd. in Malta. These vessels have many unpaid U.S. creditors for services and supplies furnished during the time they have been blocked in the United States; moreover, the owner appears to have insufficient resources to provide for the future upkeep and maintenance needs of these vessels and their crews. The United States is notifying the UNSC's Serbian Sanctions Committee of the United States's intention to license some or all of these remaining four vessels upon the owner's request.

With the FAC-licensed sales of the M/V Kapetan Martinovic and the M/V Bor, those vessels were removed from the list of blocked FRY entities and merchant vessels maintained by FAC. The new owners of several formerly Yugoslav-owned vessels, which have been sold in other countries, have petitioned FAC to remove those vessels from the list. FAC, in coordination with the Department of State, is currently reviewing the sale terms and conditions for those vessels to ascertain whether they comply with U.N. sanctions objectives and UNSC's Serbian Sanctions Committee practice.

During the past 6 months, U.S. financial institutions have continued to block funds transfers in which there is an interest of the Government of the FRY (S/M) or an entity or undertaking located in or controlled from the FRY (S/M), and to stop prohibited transfers to persons in the FRY (S/M). Such interdicted transfers have accounted for $125.6 million since the issuance of Executive Order No. 12808, including some $9.3 million during the past 6 months.

To ensure compliance with the terms of the licenses that have been issued under the program, stringent reporting requirements are imposed. More than 279 submissions have been reviewed by FAC since the last report, and more than 125 compliance cases are currently open.

6. Since the issuance of Executive Order No. 12810, FAC has worked closely with the U.S. Customs Service to ensure both that prohibited imports and exports (including those in which the Government of the FRY (S/M) or Bosnian Serb authorities have an interest) are identified and interdicted, and that permitted imports and exports move to their intended destination without undue delay. Violations and suspected violations of the embargo are being investigated and appropriate enforcement actions are being taken. There are currently 37 cases under active investigation. Since the last report, FAC has collected nine civil penalties totaling nearly $20,000. Of these, five were paid by U.S. financial institutions for violative funds transfers involving the Government of the FRY (S/M), persons in the FRY (S/M), or entities located or organized in or controlled from the FRY (S/M). Three U.S. companies and one air carrier have also paid penalties related to exports or unlicensed payments to the Government of the FRY (S/M) or persons in the FRY (S/M) or other violations of the Regulations.

7. The expenses incurred by the Federal Government in the 6-month period from November 30, 1994, through May 29, 1995, that are directly attributable to the authorities conferred by the declaration of a national emergency with respect to the FRY (S/M) and the Bosnian Serb forces and authorities are estimated at about $3.5 million, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC and its Chief Counsel's Office, and the U.S. Customs Service), the Department of State, the National Security Council, the U.S. Coast Guard, and the Department of Commerce.

8. The actions and policies of the Government of the FRY (S/M), in its involvement in and support for groups attempting to seize and hold territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence, and the actions and policies of the Bosnian Serb forces and the authorities in the areas of Bosnia and Herzegovina under their control, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. The United States remains committed to a multilateral resolution of the conflict through implementation of the United Nations Security Council resolutions.

I shall continue to exercise the powers at my disposal to apply economic sanctions against the FRY (S/M) and the Bosnian Serb forces, civil authorities, and entities, as long as these measures are appropriate, and will continue to report periodically to the Congress on significant developments pursuant to 50 U.S.C. 1703(c).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 18, 1995*.

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 12:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 523. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. THURMOND).

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on July 18, 1995, he had presented to the President of the United States the following enrolled bill:

S. 523. An act to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1180. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation to authorize the Secretary of Agriculture to expand and streamline a Distance Learning and Telemedicine Program by providing for loans and grants and to authorize appropriations for business telecommunication partnerships; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1181. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation to designate defense acquisition pilot programs in accordance with the National Defense Authorization Act for fiscal year 1991 and for other purposes; to the Committee on Armed Services.

EC–1182. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report on specialized government securities brokers and dealers; to the Committee on Banking, Housing, and Urban Affairs.

EC–1183. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement with respect to a transaction involving U.S. exports to Morocco; to the Committee on Banking, Housing, and Urban Affairs.

EC–1184. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a statement with respect to a transaction involving U.S. exports to Japan; to the Committee on Banking, Housing, and Urban Affairs.

EC–1185. A communication from the President and Chairman of the Export-Import Bank, transmitting a draft of proposed legislation to amend the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Housing, and Urban Affairs.

EC–1186. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the 1994 annual report of the Government National Mortgage Association; to the Committee on Banking, Housing, and Urban Affairs.

EC–1187. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation within five days of enactment; to the Committee on the Budget.

EC–1188. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report required under the Antarctic Marine Living Resources Convention Act of 1984; to the Committee on Commerce, Science, and Transportation.

EC–1189. A communication from the Acting Assistant Secretary of the Interior, Territorial and International Affairs, transmitting a draft of proposed legislation to amend the Magnuson Fishery and Conservation

Management Act; to the Committee on Commerce, Science, and Transportation.

EC–1190. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1992; to the Committee on Commerce, Science, and Transportation.

EC–1191. A communication from the Board of Directors of the U.S. Enrichment Corporation, transmitting, pursuant to law, a plan for the privatization of the USEC; to the Committee on Energy and Natural Resources.

EC–1192. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to Exxon and stripper well oil overcharge funds as of March 31, 1995; to the Committee on Energy and Natural Resources.

EC–1193. A communication from the Secretary of Energy, transmitting, pursuant to law, a report relative to electric motor vehicles; to the Committee on Energy and Natural Resources.

EC–1194. A communication from the Chair of the State Energy Advisory Board, Department of Energy, transmitting, pursuant to law, a report relative to energy efficiency and renewable energy; to the Committee on Energy and Natural Resources.

EC–1195. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled ''Summary of Expenditures of Rebates from the Low-Level Radioactive Waste Surcharge Escrow Account for Calendar Year 1994''; to the Committee on Energy and Natural Resources.

EC–1196. A communication from the Inspector General of the Department of Health and Human Services, transmitting, pursuant to law reports required under the Superfund Amendments and Reauthorization Act of 1986; to the Committee on Environment and Public Works.

EC–1198. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the National Institute of Environmental Health Sciences report on mercury; to the Committee on Environment and Public Works.

EC–1199. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a memorandum of justification for presidential determination regarding the drawdown of Department of Treasury commodities and services to support Serbia-Montenegro sanctions program enforcement efforts; to the Committee on Foreign Relations.

EC–1200. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–1201. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to provide defense articles and services, including military training, to Jordan to enhance its security in the wake of signing a peace treaty with Israel; to the Committee on Foreign Relations.

EC–1202. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a memorandum of justification for presidential determination regarding the drawdown of defense articles and services for the rapid reaction force; to the Committee on Foreign Relations.

EC–1203. A communciation from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a Presidential Determination with respect to Bosnia; to the Committee on Foreign Relations.

EC–1204. A communication from the Assistant Legal Adviser (Treaty Affairs), Department of State, transmitting, pursuant to law, the text of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC–1205. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a Presidential Determination with respect to Haiti; to the Committee on Foreign Relations.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–223. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Appropriations.

''JOINT RESOLUTION—

''Whereas, the Carlton Bridge between Bath and Woolwich, Maine, built in 1926, has structurally, mechanically and functionally deteriorated and is in dire need of replacement; and

''Whereas, the Carlton Bridge provides the only access along coastal Route 1 and supports more than 20,000 jobs critical for the mid-coast region; and

''Whereas, annual average daily traffic currently exceeds the bridge capacity and is projected to double over the next 20 years; and

''Whereas, the Carlton Bridge is located on Maine's most congested highway and provides an essential link for residents of and tourists to Maine's coastal communities and the Eastern United States; and

''Whereas, the economic impact of tourist travel through the mid-coast region, over the Carlton Bridge, annually exceeds $350,000,000, generating more than $80,000,000 in federal, state and local revenues annually; and

''Whereas, the Carlton Bridge provides the only access for emergency vehicles to and from regional hospitals and fire stations; and

''Whereas, the cost to replace the Carlton Bridge is more than double the total annual construction budget of the Maine Department of Transportation; and

''Whereas, federal, state, local and private support and innovative financing is critical to fund the replacement of the Carlton Bridge; and

''Whereas, the Carlton Bridge was recognized by Congress as a demonstration project under the Intermodal Surface Transportation Efficiency Act of 1991; now, therefore, be it

''*Resolved*, That We, your Memorialists, respectfully recommend and urge the President and the Congress of the United States to provide financial assistance for the replacement of the Carlton Bridge and in particular to fund the discretionary bridge program at a level sufficient to allow for the replacement of this critical access bridge; and be it further

''*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.''

POM–224. A resolution adopted by the Council of the City of Cleveland Heights, Ohio relative to the Community Development Block Grant Program; to the Committee on Banking, Housing, and Urban Affairs.

POM–225. A resolution adopted by the Township of Robinson, Crawford County, Illinois relative to the Metric System; to the Committee on Commerce, Science, and Transportation.

POM–226. A resolution adopted by the Chamber of Commerce of High Point, North Carolina relative to Amtrak; to the Committee on Commerce, Science, and Transportation.

POM–227. A resolution adopted by the Council of the City of Baltimore, Maryland relative to the U.S. Coast Guard Yard at Curtis Bay; to the Committee on Commerce, Science, and Transportation.

POM–228. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Commerce, Science, and Transportation.

''Whereas, the current territorial sea limit for the State of Maine is 3 miles; and

''Whereas, waters within the 3-mile territorial sea limit are regulated by the State of Maine with respect to marine fisheries and the waters outside the 3-mile territorial sea limit are not within the jurisdiction of the State; and

''Whereas, the United States Government has extended territorial limits to 12 miles for purposes other than marine fisheries; now, therefore, be it

''*Resolved*, That We, your Memorialists, respectfully recommend and urge the Congress of the United States to extend the territorial sea limit of the State of Maine from 3 miles to 12 miles for the purposes of marine fisheries so that the State of Maine can more effectively manage its marine fisheries resources; and be it further

''*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William J. Clinton, President of the United States, the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation.''

POM–229. A resolution adopted by the Legislature of the State of Nebraska; to the Committee on Commerce, Science, and Transportation.

''Whereas, the people of the State of Nebraska enjoy a sister-state relationship with Taiwan; and

''Whereas, commercial interaction with Taiwan has grown substantially in recent years to the mutual benefit of both our citizenry; and

''Whereas, Taiwan has made progress in the democratic political system in recent years; and

''Whereas, Taiwan has had a role in international development programs and humanitarian relief operations; and

''Whereas, the active cultural exchange by and between the sister-states has a positive educational value. Now, therefore, be it

Resolved by the members of the Ninety-Fourth Legislature of Nebraska, First Session:

''1. That the ongoing commercial relationship of the State of Nebraska, with the people of Taiwan should be recognized as serving our mutual interests in an equitable and reciprocal manner.

''2. That the Clerk of the Legislature transmit a copy of this resolution to the Speaker of the House of Representatives, to the President of the Senate of the Congress of the United States, to all members of the Nebraska delegation to the Congress of the United States, and to the President of the United States with the request that it be officially entered in the Congressional Record as memorial to the Congress of the United States.''

POM–230. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Commerce, Science, and Transportation.

''JOINT RESOLUTION 25

''Whereas, Air and highway travel is becoming increasingly congested in the Western United States as populations continue to increase in those areas; and

''Whereas, Such congestion may result in an increase in the number of fatal automobile and airplane accidents and in the amount of harmful contaminants released in to the atmosphere; and

''Whereas, The technology to build super-speed trains which operate by magnetic levitation is available and if employed would help eliminate the congested conditions on the highways and in the air and therefore help reduce the rate of fatal accidents and the levels of air pollution; and

''Whereas, Super-speed trains which operate by magnetic levitation can travel in excess of 180 miles per hour and therefore for many trips would be of comparable efficiency to that of most commercial airlines; and

''Whereas, The estimated fare for passengers of such super-speed trains is only about two-thirds of the prevailing fare for passengers of commercial airlines; and

''Whereas, The cost of construction of such a super-speed train system is estimated to be lower per mile than building traditional highways or airports in urban areas; now, therefore, be it

''*Resolved* by the Assembly and Senate of the State of Nevada, jointly, That the President of the United States and Congress are hereby urged to support all federal and state efforts to build and operate super-speed trains which operate by magnetic levitation and to support financially, through grants or otherwise, the development of a national corridor for the travel of such super-speed trains; and be it further

''*Resolved*, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the President of the United States, the Vice President of the United States as the presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

''*Resolved*, That this resolution becomes effective upon passage and approval.''

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATFIELD, from the Committee on Appropriations:

Special Report entitled ''Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 1996'' (Rept. No. 104–115).

By Mr. MACK, from the Committee on Appropriations, with amendments:

H.R. 1854. A bill making appropriations for the Legislative Branch for the fiscal year ending September 30, 1996, and for other purposes (Rept. No. 104–114).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. STEVENS:

S. 1046. A bill to authorize the Secretary of Transportation to issue certificates of documentation with appropriate endorsements for employment in the coastwise trade of the United States for 14 former U.S. Army hovercraft; to the Committee on Commerce, Science, and Transportation.

By Mr. STEVENS (for himself and Mr. HOLLINGS):

S. 1047. A bill to authorize the Secretary of Transportation to issue certificates of documentation and coastwise trade endorsements for the vessels ENCHANTED ISLES and ENCHANTED SEAS; to the Committee on Commerce, Science, and Transportation.

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 1048. A bill to authorize appropriations for fiscal year 1996 to the National Aeronautics and Space Administration for human space flight; science, aeronautics, and technology; mission support; and Inspector General; and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HEFLIN:

S. 1049. A bill to amend the National Trails Systems Act to designate the route from Selma to Montgomery as a National Historic Trail, and for other purposes; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STEVENS:

S. 1046. A bill to authorize the Secretary of Transportation to issue certificates of documentation with appropriate endorsements for employment in the coastwise trade of the United States for 14 former U.S. Army hovercraft; to the Committee on Commerce, Science, and Transportation.

By Mr. STEVENS (for himself and Mr. HOLLINGS):

S. 1047. A bill to authorize the Secretary of Transportation to issue certificates of documentation and coastwise trade endorsements for the vessels *Enchanted Isles* and *Enchanted Seas;* to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVERS LEGISLATION

Mr. STEVENS. Mr. President, today I am introducing two bills to authorize the Secretary of Transportation to issue certificates of documentation for certain vessels.

HOVERCRAFT

The first bill would authorize the issuance of certificates of documentation with appropriate endorsements for employment in the coastwise trade of the United States for 14 hovercraft formerly owned by the U.S. Army.

These hovercraft were built for the U.S. Army by Bell Aerospace Co. in Buffalo, NY, between 1982 and 1986.

The vessels are 76 feet in length and capable of hauling 30 tons of cargo each.

After being declared surplus by the U.S. Army in 1994, the hovercraft were acquired by Champion Constructors, Inc., a subsidiary of Cook Inlet Region, Inc., of Anchorage, AK.

The hovercraft are intended to be used for transporting cargo and passengers between points in Alaska.

It is my understanding that most of the major components of the hovercraft were constructed and assembled in the United States, but that because some components were constructed in Canada, the hovercraft have been determined by the Coast Guard to be ineligible to operate in the coastwise trade of the United States.

The first bill I am introducing today would allow these vessels to be operated in the U.S. coastwise trade.

I ask unanimous consent that this bill be printed in the RECORD.

VESSELS

Senator HOLLINGS joins me as a cosponsor of the second bill I am introducing today, which would authorize the Secretary of Transportation to issue certificates of documentation with appropriate endorsements for employment in the coastwise trade of the United States for two cruise ships that were built in the United States but that are currently being operated under the Panamanian flag.

It is my understanding that the *Enchanted Isle* and *Enchanted Seas* were built in the 1950's in Mississippi, and that they can carry approximately 1,000 passengers each.

The vessels left the United States coastwise trade and began flying the Panamanian flag in 1972.

A U.S. flag company, International Marine Carriers, is in the process of acquiring the vessels, and would like to employ them in trade in the Gulf of Mexico and along the east coast.

The vessels will provide jobs for U.S. seamen, and it is my understanding that U.S. maritime unions support waiving them into the U.S. trade. The Coast Guard authorization bill passed in the House earlier this year included waivers for the two ships.

I ask unanimous consent that this bill be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 1046

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue certificates of documentation with appropriate endorsements for employment in the coastwise trade of the United States for the fourteen former U.S. Army hovercraft with serial numbers LACV–30–04, LACV–30–05, LACV–30–07, LACV–30–09, LACV–30–10, LACV–30–13, LACV–30–14, LACV–30–15, LACV–30–16, LACV–30–22, LACV–30–23, LACV–30–24, LACV–30–25, and LACV–30–26.

S. 1047

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Act of June 19, 1886 (46 U.S.C. App. 289), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1156), and any agreement with the United States Government, the Secretary of Transportation may issue certificates of documentation with a coastwise endorsement for the

vessels ENCHANTED ISLES (Panamanian official number 14087–84B) and ENCHANTED SEAS (Panamanian official number 14064–84D), except that the vessels may not operate between or among islands in the State of Hawaii.

By Mr. PRESSLER (for himself and Mr. BURNS):

S. 1048 A bill to authorize appropriations for fiscal year 1996 to the National Aeronautics and Space Administration for human space flight; science, aeronautics, and technology; mission support; and inspector general; and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE NASA AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. PRESSLER. Mr. President, today I introduced the NASA Authorization Act for Fiscal Year 1996. NASA faces two challenges. The first is maintaining America's leadership in aeronautics and space. The second is accomplishing the leadership goal within the confines of a balanced Federal budget. This authorization is intended to allow NASA to meet both of these challenges.

NASA started out this year with a plan to cut $5 billion over 5 years from its budget. Then, the Senate and House developed budget plans which require even deeper cuts. As a result, our bill authorizes a total of $13.8 billion for NASA in fiscal year 1996, a 3-percent decrease from the current funding level of $14.26 billion.

Despite the funding cut, the bill manages to support a diverse and forward-looking space program. It authorizes all of NASA's major current programs such as Mission to Planet Earth, Space Station, Space Science, and Aeronautics and, in almost all cases, at their requested funding levels. At the same time, it prepares NASA for the future by authorizing a number of new starts including the new Reusable Launch Vehicle Technology Development Program aimed at providing private industry the technology to eventually build a Shuttle replacement, and a new radar satellite program to develop and make use of the latest advances in satellite remote sensing technology.

Mr. President, I would now like to make special mention of certain portions of the bill.

I believe Mission to Planet Earth may be NASA's most important and relevant program. The satellite data from Mission to Planet Earth will deliver direct benefits to the taxpayer in contrast to the speculative spinoffs promised by other space activities. For this reason, the bill fully funds this activity at the requested level of $1.36 billion.

Using the latest satellite technology, Mission to Planet Earth will help researchers understand and predict the global climate trends that affect our lives. As a Senator representing an agricultural State, I have a keen interest in this program's potential to provide detailed data on soil conditions, topography, crops, and other information critical to the farming and ranching community. I also take great pride in the selection of the EROS Data Center in Sioux Falls, SD as one of the regional data centers that will collect and distribute this satellite data.

I am very concerned that, under the new budget constraints in which we find ourselves, some may seek to sacrifice Mission to Planet Earth, and space science in general, to fund Space Station. that would be a disservice to the Nation and I will oppose any such move strongly.

I am pleased with the direction of the baseline plan for the Mission to Planet Earth Program and am concerned about the possibility of NASA taking any imprudent and unnecessary efforts to restructure the program. Accordingly, the bill specifically prohibits NASA from changing the program unless, 60 days before such action, NASA has reported to Congress on the nature and overall impact of the planned changes.

The bill also provides the full $2.1 billion requested funding for space station. However, this authorization should not be interpreted as a ringing endorsement of that program. I am a longstanding supporter of the program, but, in recent years, I have become concerned that it has become too expensive, too complex, and too dependent on the contributions of Russia, the latest station partner.

In a June 1995 report, the General Accounting Office [GAO] estimated that the total cost of the design, launch, and operation of the space station will be $94 billion. That is almost seven times the entire annual budget for NASA. Given the history of past missions, it is fair to assume that $94 billion price tag for the program will increase over time. If that happens, we may wake up to find the enormous space station budget has crowded out every other NASA program and that space station has become NASA's only mission. Because of my reservations about space station, I may well reconsider my support in the future.

The bill also supports several new starts at NASA to extend its vision into the next century. The bill authorizes a reusable launch vehicle program, which will support the X–33 and X–34 activities to pave the way for the later development by private enterprise of a replacement for the shuttle in the next decade.

Employing 1970's technologies and costing $400 million per flight, the shuttle may have outlived its usefulness. However, within today's budget constraints, the Government cannot afford to foot the entire bill for a new multibillion spacecraft development program. That is why the reusable launch vehicle program, with its emphasis on sharing financing with industry and its goal of moving our national space transportation system toward privatization, seems a viable concept worth pursuing.

Also authorized are the New Millennium initiative to develop new microminiature technologies aimed at reducing the cost and development times for satellites and two infrared astronomy programs—the Stratospheric Observatory for Infrared Astronomy and the Space Infrared Telescope Facility. The bill also authorizes a new Radar Satellite Program we call ''TopSat,'' and a third shuttle flight for the Shuttle Imaging Radar-C satellite. Because radar satellites have the ability to ''see'' through cloud cover, they will dramatically enhance the capability of the Nation's existing optical-based satellite systems such as Landsat. With Japan and Europe already operating radar satellite systems, and with Canada poised to deploy one later this year, the United States cannot afford to be left behind in this critical technology.

In my role as chairman of the Senate Committee on Commerce, Science, and Transportation, it has become apparent to me that small-city, rural States like my home State of South Dakota are often forgotten in our vast $70 billion Federal science and technology enterprise. That part of America wants to be part of the technological revolution. More important, it wants to contribute.

It is in the national interest to strengthen the scientific talent, resources, and infrastructure in our rural States through appropriate research, education, and outreach activities. The bill attempts to accomplish this in several ways. It increases funding for the Experimental Program to Stimulate Competitive Research Program [EPSCoR] from its current level of $4.9 million to $6.9 million. NASA's EPSCoR Program, as well as similar programs in six other science agencies, have been instrumental in providing Federal funding for academic research in rural States. Our bill also funds a Rural Teacher Resource Center, a Rural Technology Transfer and Commercialization Center, and a regional science education and outreach center for the Plains States region.

Mr. President, I believe NASA is up to the challenge of keeping America preeminent in aeronautics and space despite the intense budget pressure and despite the increasing competition from other spacefaring nations. It is my belief this authorization bill provides NASA with the support it needs to meet that challenge.

ADDITIONAL COSPONSORS

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 426

At the request of Mr. SARBANES, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 603

At the request of Mr. FAIRCLOTH, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 603, a bill to nullify an Executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees, and for other purposes.

S. 628

At the request of Mr. KYL, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 628, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 770

At the request of Mr. DOLE, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 770, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

S. 772

At the request of Mr. DORGAN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 772, a bill to provide for an assessment of the violence broadcast on television, and for other purposes.

S. 773

At the request of Mrs. KASSEBAUM, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Florida [Mr. MACK], the Senator from Missouri [Mr. ASHCROFT], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 773, a bill to amend the Federal Food, Drug, and Cosmetic Act to provide for improvements in the process of approving and using animal drugs, and for other purposes.

S. 877

At the request of Mrs. HUTCHISON, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 877, a bill to amend section 353 of the Public Health Service Act to exempt physician office laboratories from the clinical laboratories requirements of that section.

S. 930

At the request of Mr. SHELBY, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 930, a bill to require States receiving prison construction grants to implement requirements for inmates to perform work and engage in educational activities, and for other purposes.

S. 989

At the request of Mrs. KASSEBAUM, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 989, a bill to limit funding of an Executive order that would prohibit Federal contractors from hiring permanent replacements for lawfully striking employees, and for other purposes.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of Senate Resolution 103, a resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of Senate Resolution 146, a resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as ''National Family Week,'' and for other purposes.

SENATE RESOLUTION 149

At the request of Mr. AKAKA, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of Senate Resolution 149, a resolution expressing the sense of the Senate regarding the recent announcement by the Republic of France that it intends to conduct a series of underground nuclear test explosions despite the current international moratorium on nuclear testing.

AMENDMENT NO. 1530

At the request of Mr. CAMPBELL the names of the Senator from Kentucky [Mr. FORD] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of amendment No. 1530 intended to be proposed to S. 343, a bill to reform the regulatory process, and for other purposes.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

HUTCHISON (AND ASHCROFT) AMENDMENT NO. 1789

Mrs. HUTCHISON (for herself and Mr. ASHCROFT) proposed an amendment to amendment No. 1786 proposed by Mr. ASHCROFT to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

In lieu of the matter proposed to be added, add the following:

''TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

This Act may be cited as the ''Urban Regulatory Relief Zone Act of 1995''.

SEC. 202. FINDINGS.

The Congress finds that—

(1) the likelihood that a proposed business site will comply with many government regulations is inversely related to the length of time over which a site has been utilized for commercial and/or industrial purposes in the past, thus rendering older sites in urban areas the sites most unlikely to be chosen for new development and thereby forcing new development away from the areas most in need of economic growth and job creation; and

(2) broad Federal regulations often have unintended social and economic consequences in urban areas where such regulations, among other things—

(A) offend basic notions of common sense, particularly when applied to individual sites;

(B) adversely impact economic stability;

(C) result in the unnecessary loss of existing jobs and businesses;

(D) undermine new economic development, especially in previously used sites;

(E) create undue economic hardships while failing significantly to protect human health, particularly in areas where economic development is urgently needed in order to improve the health and welfare of residents over the long term; and

(F) contribute to social deterioration to a such degree that high unemployment, crime, and other economic and social problems create the greatest risk to the health and well-being of urban residents.

SEC. 203. PURPOSES.

The purposes of this title are to—

(1) enable qualifying cites to provide for the general well-being, ealth, safety and security for their residents living in distressed areas by empowering such cities to obtain selective relief from Federal regulations that undermine economic stability and development in distressed areas within the city; and

(2) authorize Federal agencies to waive the application of specific Federal regulations in distressed urban areas designated as Urban Regulatory Relief Zones by an Economic Development Commission—

(A) upon application through the Office of Management and Budget by an Economic Development Commission established by a qualifying city pursuant to section 205; and

(B) upon a determination by the appropriate Federal agency that granting such a waiver will not substantially endanger health or safety.

SEC. 204. ELIGIBILITY FOR WAIVERS.

(a) ELIGIBLE CITIES.—The mayor or chief executive officer of a city may establish an Economic Development Commission to carry out the purposes of section 205 if the city has a population greater than 200,000 according to:

(1) the U.S. Census Bureau's 1992 estimate for city populations; or

(2) beginning six months after the enactment of this title, the U.S. Census Bureau's latest estimate for city populations.

(b) DISTRESSED AREA.—Any census tract within a city shall qualify as distressed area if—

(1) 33 percent or more of the resident population in the census tract is below the poverty line; or

(2) 45 percent or more of out-of-school males aged 16 and over in the census tract worked less than 26 weeks in the preceding year; or

(3) 36 percent or more families with children under age 18 in the census tract have an unmarried parent as head of the household; or

(4) 17 percent or more of the resident families in the census tract received public assistance income in the preceding year.

SEC. 205. ECONOMIC DEVELOPMENT COMMISSIONS.

(a) PURPOSE.—The mayor or chief executive officer of a qualifying city under section

204 may appoint an Economic Development Commission for the purpose of—

(1) designating distressed areas, or a combination of distressed areas with one another or with adjacent industrial or commercial areas, within the city as Urban Regulatory Relief Zones; and

(2) making application through the Office of Management and Budget to waive the application of specific Federal regulations within such Urban Regulatory Relief Zones.

(b) COMPOSITION.—To the greatest extent practicable, an Economic Development Commission shall include—

(1) residents representing a demographic cross section of the city population; and

(2) members of the business community, private civic organizations, employers, employees, elected officials, and State and local regulatory authorities.

(c) LIMITATION.—No more than one Economic Development Commission shall be established or designated within a qualifying city.

SEC. 206. LOCAL PARTICIPATION.

(a) PUBLIC HEARINGS.—Before designating an area as an Urban Regulatory Relief Zone, an Economic Development Commission established pursuant to section 205 shall hold a public hearing, after giving adequate public notice, for the purpose of soliciting the opinions and suggestions of those persons who will be affected by such designation.

(b) INDIVIDUAL REQUESTS.—The Economic Development Commission shall establish a process by which individuals may submit requests to the Economic Development Commission to include specific Federal regulations in the Commission's application to the Office of Management and Budget seeking waivers of Federal regulations.

(c) AVAILABILITY OF COMMISSION DECISIONS.—After holding a hearing under paragraph (a) and before submitting any waiver applications to the Office of Management and Budget pursuant to section 207, the Economic Development Commission shall make publicly available—

(1) a list of all areas within the city to be designated as Urban Regulatory Relief Zones, if any;

(2) a list of all regulations for which the Economic Development Commission will request a waiver from a Federal agency; and

(3) the basis for the city's findings that the waiver of a regulation would improve the health and safety and economic well-being of the city's residents and the data supporting such a determination.

SEC. 207. WAIVER OF FEDERAL REGULATIONS.

(a) SELECTION OF REGULATIONS.—An Economic Development Commission may select for waiver, within an Urban Regulatory Relief Zone, Federal regulations that—

(1)(A) are unduly burdensome to business concerns located within an area designated as an Urban Regulatory Relief Zone; or

(B) discourages new economic development within the zone; or

(C) creates undue economic hardships in the zone; or

(D) contributes to the social deterioration of the zone; and

(2) if waived, will not substantially endanger health or safety.

(b) REQUEST FOR WAIVER.—(1) An Economic Development Commission shall submit a request for the waiver of Federal regulations to the Office of Management and Budget.

(2) Such request shall—

(A) identify the area designated as an Urban Regulatory Relief Zone by the Economic Development Commission;

(B) identify all regulations for which the Economic Development Commission seeks a waiver; and

(C) explain the reasons that waiver of the regulations would economically benefit the Urban Regulatory Relief Zone and the data supporting such determination.

(c) REVIEW OF WAIVER REQUEST.—No later than 60 days after receiving the request for waiver, the Office of Management and Budget shall—

(1) review the request for waiver;

(2) determine whether the request for waiver is complete and in compliance with this title, using the most recent census data available at the time each applicant is submitted; and

(3) after making a determination under paragraph (2)—

(A) submit the request for waiver to the Federal agency that promulgated the regulation and notify the requesting Economic Development Commission of the date on which the request was submitted to such agency; or

(B) notify the requesting Economic Development Commission that the request is not in compliance with this Act with an explanation of the basis for such determination.

(d) MODIFICATION OF WAIVER REQUESTS.—An Economic Development Commission may submit modifications to a waiver request. The provisions of subsection (c) shall apply to a modified waiver as of the date such modification is received by the Office of Management and Budget.

(e) WAIVER DETERMINATION.—(1) No later than 120 days after receiving a request for waiver under subsection (c) from the Office of Management and Budget, a Federal agency shall—

(A) make a determination of whether to waiver a regulation in whole or in part; and

(B) provide written notice to the requesting Economic Development Commission of such determination.

(2) Subject to subsection (g), a Federal agency shall deny a request for a waiver only if the waiver substantially endangers health or safety.

(3) If a Federal agency grants a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) describes the extent of the waiver in whole or in part; and

(B) explains the application of the waiver, including guidance for the use of the waiver by business concerns, within the Urban Regulatory Relief Zone.

(4) If a Federal agency denies a waiver under this subsection, the agency shall provide a written statement to the requesting Economic Development Commission that—

(A) explains the reasons that the waiver substantially endangers health or safety; and

(B) provides a scientific basis in writing for such determination.

(f) AUTOMATIC WAIVER.—If a Federal agency does not provide the written notice required under subsection (e) within the 120-day period as required under such subsection, the waiver shall be deemed to be granted by the Federal agency.

(g) LIMITATION.—No provision of this Act shall be construed to authorize any Federal agency to waive any regulation or Executive order that prohibits, or the purpose of which is to protect persons against, discrimination on the basis of race, color, religion, gender, or national origin.

(h) APPLICABLE PROCEDURES.—A waiver of a regulation under subsection (e) shall not be considered to be a rule, rulemaking, or regulation under chapter 5 of title 5, United States Code. The Federal agency shall publish a notice in the Federal Register stating any waiver of a regulation under this section.

(i) EFFECT OF SUBSEQUENT ADMINISTRATION OF REGULATIONS.—If a Federal agency amends a regulation for which a waiver under this section is in effect, the agency shall not change the waiver to impose additional requirements.

(j) EXPIRATION OF WAIVERS.—No waiver of a regulation under this section shall expire unless the Federal agency determines that a continuation of the waiver substantially endangers health or safety.

SEC. 208. DEFINITIONS.

For purposes of this Act, the term—

(1) ''regulation'' means—

(A) any rule as defined under section 551(4) of title 5, United States Code; or

(B) any rulemaking conducted on the record after opportunity for an agency hearing under sections 556 and 557 of such title;

(2) ''Urban Regulatory Relief Zone'' means an area designated under section 205;

(3) ''qualifying city'' means a city which is eligible to establish an Economic Development Commission under section 204;

(4) ''industrial or commercial area'' means any part of a census tract zoned for industrial or commercial use which is adjacent to a census tract which is a distressed area pursuant to section 205(b); and

(5) ''poverty line'' has the same meaning as such term is defined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

SEC. 209. EFFECTIVE DATE.

The provisions of this title shall become effective one day after the date of enactment.''.

GLENN AMENDMENT NO. 1790

(Ordered to lie on the table.)

Mr. GLENN submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 59, delete entire section 634, ''petition for review of a major freestanding risk assessment''.

Insert in lieu thereof:

SEC. 634. PLAN FOR THE REVIEW OF RISK ASSESSMENTS.

(a) No later than 18 months after the effective date of this section, the head of each covered agency shall publish, after notice and public comment, a plan to review and revise any risk assessment published before the expiration of such 18-month period if the covered agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment.

(b) A plan under subsection (a) shall—

(1) provide procedures for receiving and considering new information and risk assessments from the public; and

(2) set priorities and criteria for review and revision of risk assessments based on such factors as the agency head considers appropriate.

(3) provide a schedule for the review of risk assessments. This schedule shall be revised as appropriate based on new information received under (b)(1) and reviewed under criteria developed in accordance with paragraph (b)(2).

(c) The head of each covered agency shall review risk assessments according to the schedule published by the agency under paragraph (a).

GLENN (AND LEVIN) AMENDMENT NO. 1791

(Ordered to lie on the table.)

Mr. GLENN (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 25, line 23, through page 35, line 8, strike text and insert in lieu thereof the following:

"§ 623. Agency regulatory review

''(a)(1) Not late than 1 year after the date of the enactment of this section, and every 5 years thereafter, the head of each agency shall publish in the Federal Register a notice of proposed rulemaking under section 553 that contains a preliminary schedule of rules selected for review under this section by the head of the agency and in the sole discretion of the heard of the agency, and request public comment thereon, including suggestions for additional rules warranting review. The agency shall allow at least 180 days for public comment.

''(2) The preliminary schedule under this subsection shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) In selecting rules and establishing deadlines for the preliminary schedule, the head of the agency shall consider the extent to which, in the judgment of the head of the agency—

''(A) a rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the benefits of the rule do not justify its costs or the rule does not achieve the rulemaking objectives in a cost-effective manner;

''(C) a rule could be revised in a manner allowed by the statute authorizing the rule so as to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including, but not limited to, those listed in section 622(c)(2)(C)(iii);

''(D) the importance of each rule relative to other rules being reviewed under this section; or

''(E) the resources expected to be available to the agency to carry out the reviews under this section.

''(b)(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the head of each agency shall publish a final rule that establishes a schedule of rules to be reviewed by the agency under this section.

''(2) The schedule shall establish a deadline for completion of the review of each rule listed on the schedule, taking into account the criteria in subsection (a)(3) and comments received in the rulemaking under subsection (a). Each such deadline shall occur not later than 11 years from the date of publication of the preliminary schedule.

''(3) The head of the agency shall modify the agency's schedule under this section to reflect any change contained in an appropriations Act under subsection (d).

''(c)(1) Notwithstanding section 623 and except as provided otherwise in this subsection, judicial review of agency action taken pursuant to the requirements of this section shall be limited to review of compliance or noncompliance with the requirements of this section.

''(2) Agency decisions to place, or decline to place, a rule on the schedule, and the deadlines for completion of a rule, shall not be subject to judicial review.

''(d)(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum the amount requested to be appropriated for implementation of this section during the upcoming fiscal year; and

''(B) include a list of rules which may be subject to subsection (e)(3) during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (b) to place a rule on the schedule for review or change a deadline for review of a rule may be included in annual appropriations Act for the relevant agencies. An authorizing committee with jurisdiction may recommend, to the House of Representatives or Senate appropriations committee as the case may be), such amendments. The appropriations committee to which such amendments have been submitted may include the amendments in the annual appropriations Act for the relevant agency. Each agency shall modify its schedule under subsection (b) to reflect such amendments that are enacted into law.

''(e)(1) For each rule on the schedule under subsection (b), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be continued, amended, or repealed;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by the agency of whether the rule is a major rule, and if so, whether the benefits of the rule justify its costs;

''(iii) contains a preliminary determination as to whether the rule should be continued, amended, or repealed; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B); and

''(ii) contains a final determination of whether to continue, amend, or repeal the rule;

''(iii) if the agency determines to continue the rule and the rule is a major rule, describes a final analysis as to whether the benefits of the rule justify its costs; and

''(iv) if the agency determines to amend or repeal the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the final determination of the agency is to continue the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(C).

''(3) If the final determination of the agency is to continue the rule, and the agency has concluded that the benefits do not justify the costs, the agency shall transmit to the appropriate committees of Congress the cost-benefit analysis and a statement of the agency's reasons for continuing the rule.

''(f) If an agency makes a determination to amend or repeal a major rule under subsection (e)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years of the date of publication of the notice in subsection (e)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a major rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(g) If an agency has not completed review of the rule by the deadline established under subsection (b), the agency shall immediately commence a rulemaking action pursuant to section 553 of this title to repeal the rule and shall complete such rulemaking within 2 years of the deadline established under subsection (b).

''(h)(1) The final determination of an agency to continue a rule under subsection (e)(1)(C) shall be considered final agency action.

''(2) Failure to promulgate an amended major rule or to make other decisions required by subsection (g) by the date established under such subsection shall be subject to judicial review pursuant to section 706(1) of this title.

ROTH AMENDMENTS NOS. 1792–1794

(Ordered to lie on the table.)

Mr. ROTH submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1792

On page 35, line 23, strike all down through page 38, line 5, and insert in lieu thereof the following:

''(3) the rule adopts the most cost-effective alternative of the reasonable alternatives that achieve the objectives of the statute.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(2) the rule adopts the most cost-effective alternative of the reasonable alternatives that achieve the objectives of the statute.''

AMENDMENT NO. 1793

On page 35, line 23, strike all down through page 38, line 5, and insert in lieu thereof the following:

''(3) the rule adopts the alternative with greater net benefits than the other reasonable alternatives that achieve the objectives of the statute.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(2) the rule adopts the alternative with the least net cost of the reasonable alternatives that achieve the objectives of the statute.''

AMENDMENT NO. 1794

On page 56, delete lines 17–21 and insert in lieu thereof the following:

''(2) The head of an agency shall place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context, including appropriate comparisons with other risks that are familiar to, and routinely encountered by, the general public.''

SHELBY (AND OTHERS) AMENDMENT NO. 1795

(Ordered to lie on the table.)

Mr. SHELBY (for himself, Mr. FRIST, Mrs. HUTCHISON, Mr. LOTT, Mr. HELMS, Mr. COCHRAN, and Mr. GRAMS) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 96, insert between lines 20 and 21 the following new section:

SEC. . SMALL BUSINESS REGULATORY BILL OF RIGHTS.

(a) SHORT TITLE.—This section may be cited as the ''Small Business Regulatory Bill of Rights Act''.

(b) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end the following new subchapter:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''§ 597. Definition

''For purposes of this subchapter, the term 'small business' has the same meaning given such term in section 601(3).

''§ 597a. Rights of small businesses prior to enforcement action

''(a) Except as provided in section 597c, each agency shall ensure that its regulatory enforcement program includes—

''(1) implementation of a no-fault compliance audit program;

''(2) a publicized, coherent compliance assistance program available to regulated small businesses under the agency's jurisdiction that provides technical and other compliance related assistance to small businesses upon request of a small business;

''(3) a method to enforce regulations in a uniform, consistent, and nonarbitrary manner nationwide;

''(4) an abatement period of not less than 60 days to allow the small business to correct any violations discovered during an agency inspection before a penalty is assessed; and

''(5) a grace period of not less than 180 days to allow the small business to correct any violation discovered through participation in the programs created under paragraph (1) or (2).

''(b) No penalties or enforcement actions will be assessed or taken if such violations are corrected during the grace period described under subsection (a)(5), so long as the business has not engaged in a pattern of international misconduct. Additional penalties may be assessed on businesses engaging in a pattern of intentional misconduct, not to exceed one and one half times the original penalty.

''§ 597b. Rights after investigative or enforcement action

''Except as provided in section 597c, each small business that has been found in violation of a regulation and was subject to an enforcement action or penalty shall have the right—

''(1) to be free from inspections for 180 days after the date on which the small business obtains certification from the agency that the small business is in compliance with the regulation;

''(2) to have ability to pay factored into the assessment of penalties through flexible payments plans with reduced installments that reflect the business's long-term ability to pay (taking into account cash-flow and long-term profitability); and

''(3) to not have fines paid be used to finance the inspecting agency, but instead credited to the General Treasury of the United States, to be used for reduction of the Federal deficit.

''§ 597c. Exceptions and limitation

''(a) A provision of this subchapter shall not apply if compliance with such provision of this subchapter would—

''(1) substantially delay responding to an imminent danger to person or property;

''(2) substantially or unreasonably impede a criminal investigation; or

''(3) enable any small business to knowingly disregard applicable regulations, except a request for a no-fault compliance audit shall not constitute prima facie evidence of knowingly disregarding applicable regulations.

''(b) A small business shall not be entitled to the benefit of a no-fault compliance audit program under section 597a(1) regarding a particular enforcement issue for 60 days after the business has had an agency-initiated contact regarding such issue.

''(c) This subchapter shall not apply to any rule or regulation described under section 621(9)(B)(i).''.

(c) TECHNICAL AMENDMENT.—The analysis for chapter 5 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER VI—SMALL BUSINESS REGULATORY BILL OF RIGHTS

''Sec.
''597. Definition.
''597a. Rights of small businesses prior to enforcement action.
''597b. Rights after investigative or enforcement action.
''597c. Exceptions and limitation.''.

(d) RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.—

(1) COORDINATION.—The Director of the Office of Management and Budget shall coordinate the implementation of this section and establish a schedule for bringing all affected agencies into full compliance by the effective date of this section. Agencies may be brought into partial compliance before such date.

(2) REPORT.—The Director of the Office of Management and Budget shall submit an annual report to Congress on the progress of the agencies in complying with this section and the amendments made by this section.

(e) EFFECTIVE DATE.—This section shall take effect on the earlier of the date designated by the President or January 1, 1998.

LIEBERMAN AMENDMENT NO. 1796

(Ordered to lie on the table.)

Mr. LIEBERMAN submitted an amendment intended to be proposed by him to amendment No. 1573 submitted by Mr. BOND to the bill S. 343, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

''Petition for alternative method of compliance

''(a) Except as provided in subsection (j) or unless prohibited by the statute authorizing a rule, any person subject to a rule may petition the relevant agency implementing the rule to modify or waive the specific requirements of a rule and to authorize an alternative compliance strategy satisfying the criteria of subsection (b).

''(b) Any petition submitted under subsection (a) shall—

''(1) identify with reasonable specificity the requirements for which the modification or waiver is sought and the alternative compliance strategy being proposed;

''(2) identify the facility to which the modification or waiver would pertain;

''(3) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, demonstrate that the alternative compliance strategy, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account all cross-media impacts, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule; and

''(4) demonstrate that the proposed alternative compliance strategy provides a degree of accountability, enforceability, and public and agency access to information at least to that of the rule.

''(c) No later than the date on which the petitioner submits the petition to the agency, the petitioner shall in form the public of the submission of such petition (including a brief description of the petition) through publication of a notice in newspapers of general circulation in the area in which the facility is located. The agency may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment.

''(d) The agency may approve the petition upon determining that the proposed alternative compliance strategy—

''(1) considering all the significant applicable human health, safety, and environmental benefits intended to be achieved by the rule, from the standpoint of the applicable human health, safety, and environmental benefits, taking into account all cross-media impacts, will achieve—

''(A) a significantly better result than would be achieved through compliance with the rule; or

''(B) an equivalent result at significantly lower compliance costs than would be achieved through compliance with the rule;

''(2) will provide a degree of accountability, enforceability, and public and agency access to information at least equal to that provided by the rule;

''(3) will not impose an undue burden on the agency that would be responsible for administering and enforcing such alternative compliance strategy; and

''(4) satisfies any other relevant factors.

''(e) Where relevant, the agency shall give priority to petitions with alternative compliance strategies using pollution prevention approaches.

''(f) In making determinations under subsection (d), the agency shall take into account whether the proposed alternative compliance strategy would transfer any significant health, safety, or environmental effects to other geographic locations, future generations, or classes of people.

''(g) Any alternative compliance strategy for which a petition is granted under this section shall be enforceable as if it were a provision of the rule being modified or waived.

''(h) The grant of a petition under this section shall be judicially reviewable as if it were the issuance of an amendment to the rule being modified or waived. The denial of a petition shall not be subject to judicial review.

''(i) No agency may grant more than 30 petitions per year under this section.

''(j) If the statute authorizing the rule that is the subject of the petition provides procedures or standards for an alternative method of compliance, the petition shall be reviewed solely under the terms of the statute.

BOND (AND ROBB) AMENDMENTS NOS. 1797–1798

(Ordered to lie on the table.)

Mr. BOND (for himself and Mr. ROBB) submitted two amendments intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1797

On page 44, line 14, strike everything after ''section 629'' through page 46, line 4, and insert in lieu thereof the following:

''Petition for alternative means of compliance

''(a) IN GENERAL.—Any person may petition an agency to modify or waive one or

more rules or requirements applicable to one or more facilities owned or operated by such person. The agency is authorized to enter into an enforceable agreement establishing methods of compliance, not otherwise permitted by such rules or requirements, to be complied with in lieu of such rules or requirements. The petition shall identify with reasonable specificity, each facility for which an alternative means of compliance is sought, the rules and requirements for which a modification or waiver is sought and the proposed alternative means of compliance and means to verify compliance and for communication with the public. Where a state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program, the relevant agency shall delegate, if the state so requests, its authority under its authority under this section to the state.

''(b) STANDARDS.—The agency shall grant the petition if the state in which the facility is located agrees to any alternative means of compliance with respect to rules or requirements over which such state has delegated authority to operate a federal program, or is authorized to operate a state program in lieu of an otherwise applicable federal program, and the agency determines that the petitioner has demonstrated that there is a reasonable likelihood that the alternative means of compliance—

(1) would achieve an overall level of protection of health, safety and the environment at least substantially equivalent to or exceeding the level of protection provided by the rules or requirements subject to the petition;

(2) would provide a degree of public access to information, and of accountability and enforceability, at least substantially equivalent to the degree provided by the rules and requirements subject to the petition; and

(3) would not impose an undue burden on the agency responsible for enforcing the agreement entered into pursuant to subsection (f).

''(c) OTHER PROCEDURES.—If the statute authorizing a rule subject to a petition under this section provides specific available procedures or standards allowing an alternative means of compliance for such rule, such petition shall be reviewed consistent with such procedures or standards, unless the head of the agency for good cause finds that reviewing the petition in solely accordance with subsection (b) is in the public interest.

''(d) PUBLIC NOTICE AND INPUT.—No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in the newspapers of general circulation in the area in which the facility or facilities are located. Agencies may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide public notice and opportunity to comment on the petition and on any proposed enforceable agreement.

''(e) DEADLINE AND LIMITATION ON SUBSEQUENT PETITIONS.—A decision to grant or deny a petition under this subsection shall be made no later than 240 days after a complete petition is submitted. Following a decision to deny a petition under this section, no petition, submitted by the same person, may be granted unless it applies to a different facility, or it is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rules or requirements subject to the petition.

''(f) AGREEMENT.—Upon granting a petition under this section, the agency shall propose to the petitioner an enforceable agreement establishing alternative methods of compliance for the facility in lieu of the otherwise applicable rules or requirements and identifying such rules and requirements. Not withstanding any other provision of law, such enforceable agreement may modify or waive the terms of any rule or requirement, including any standard, limitation, permit, order, regulations or other requirement issued by the agency consistent with the requirements of subsection (b) and (c), provided that the state in which the facility is located agrees to any modification or waiver of a rule or requirement over which such state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program. If accepted by the petitioner, compliance with such agreement shall be deemed to be compliance with the laws and rules identified in the agreement. The agreement shall contain appropriate mechanisms to assure compliance including money damages and injunctive relief, for violations of the agreement. The agreement may provide the state in which the facility is located with rights equivalent to the agency with respect to one or more provisions of the agreement.

''(g) NEPA NONAPPLICABILITY.—Approval of an alternative means of compliance under this section by an agency shall not be considered a major Federal action for purposes of the National Environmental Policy Act.

''(h) JUDICIAL REVIEW.—A decision to grant or deny a petition, or to enter into an enforceable agreement, under this section shall be not be subject to judicial review.

''(i) SAVINGS CLAUSE.—A decision to grant or deny a petition or enter into an enforceable agreement shall not create any obligation on an agency to modify and regulation. Nothing in this section shall be construed to diminish the level of protection of public health, safety or the environmental required by statute.

AMENDMENT NO. 1798

On page 1, line 5, strike everything through the end of the amendment and insert in lieu thereof the following:

"Petition for alternative means of compliance

''(a) IN GENERAL.—Any person may petition an agency to modify or waive one or more rules or requirements applicable to one or more facilities owned or operated by such person. The agency is authorized to enter into an enforceable agreement establishing methods of compliance, not otherwise permitted by such rules or requirements, to be complied with in lieu of such rules or requirements. The petition shall identify with reasonable specificity, each facility for which an alternative means of compliance is sought, the rules and requirements for which a modification or waiver is sought and the proposed alternative means of compliance and means to verify compliance and for communication with the public. Where a state had delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of any otherwise applicable federal program, the relevant agency shall delegate, if the state so requests, its authority under its authority under this section to the state.

''(b) STANDARDS.—The agency shall grant the petition if the state in which the facility is located agrees to any alternative means of compliance with respect to rules or requirements over which such state has delegated authority to operate a federal program, or is authorized to operate a state program in lieu of an otherwise applicable federal program, and the agency determines that the petitioner had demonstrated that there is a reasonable likelihood that the alternative means of compliance—

(1) would achieve an overall level of protection of health, safety and the environment at least substantially equivalent to or exceeding the level of protection provided by rules or requirements subject to the petition;

(2) would provide a degree of public access to information, and of accountability and enforceability, at least substantially equivalent to the degree provided by the rules and requirements subject to the petition; and

(3) would not impose an undue burden on the agency responsible for enforcing the agreement entered into pursuant to subsection (f).

''(c) OTHER PROCEDURES.—If the statute authorizing a rule subject to a petition under this section provides specific available procedures or standards allowing an alternative means of compliance for such rule, such petition shall be reviewed consistent with such procedures or standards, unless the head of the agency for good cause finds that reviewing the petition in solely accordance with subsection (b) is in the public interest.

''(d) PUBLIC NOTICE AND INPUT.—No later than the date on which the petitioner submits the petition to the agency, the petitioner shall inform the public of the submission of such petition (including a brief description of the petition) through publication of a notice in the newspapers of general circulation in the area in which the facility or facilities are located. Agencies may authorize or require petitioners to use additional or alternative means of informing the public of the submission of such petitions. If the agency proposes to grant the petition, the agency shall provide notice and opportunity to comment on the petition and on any proposed enforceable agreement.

''(e) DEADLINE AND LIMITATION ON SUBSEQUENT PETITIONS.—A decision to grant or deny a petition under this subsection shall be made no later than 240 days after a complete petition is submitted. Following a decision to deny a petition under this section, no petition, submitted by the same person, may be granted unless it applies to a different facility, or it is based on a change in a fact, circumstance, or provision of law underlying or otherwise related to the rules or requirements subject to the petition.

''(f) AGREEMENT.—Upon granting a petition under this section, the agency shall propose to the petitioner an enforceable agreement establishing alternative methods of compliance for the facility in lieu of the otherwise applicable rules or requirements and identifying such rules and requirements. Notwithstanding any other provision of law, such enforceable agreement may modify or waive the terms of any rule or requirement, including any standard, limitation, permit, order, regulations or other requirement issued by the agency consistent with the requirements of subsections (b) and (c), provided that the state in which the facility is located agrees to any modification or waiver of a rule or requirement over which such state has delegated authority to operate a federal program within the state, or is authorized to operate a state program in lieu of an otherwise applicable federal program. If accepted by the petitioner, compliance with such agreement shall be deemed to be compliance with the laws and rules identified in the agreement. The agreement shall contain appropriate mechanisms to assure compliance including money damages and injunctive relief, for violations of the agreement. The agreement may provide the state in which the facility is located with rights equivalent to the agency with respect to one or more provisions of the agreement.

''(g) NEPA NONAPPLICABILITY.—Approval of an alternative means of compliance under

this section by an agency shall not be considered a major Federal action for purposes of the National Environmental Policy Act.

''(h) JUDICIAL REVIEW.—A decision to grant or deny a petition, or to enter into an enforceable agreement, under this section shall not be subject to judicial review.

''(i) SAVINGS CLAUSE.—A decision to grant or deny a petition or enter into an enforceable agreement shall not create any obligation on an agency to modify any regulation. Nothing in this section shall be construed to diminish the level of protection of public health, safety or the environment required by statute.

JOHNSTON AMENDMENTS NOS. 1799–1800

(Ordered to lie on the table)

Mr. JOHNSTON submitted two amendments intended to be proposed by him to amendment No. 1574 submitted by Mr. LAUTENBERG to the bill S. 343, supra; as follows:

AMENDMENT NO. 1799

In lieu of the matter to be inserted, insert the following:

''(d) TOXICS RELEASE INVENTORY STANDARDS.—Section 313(d) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023(d)) is amended by adding the following to the end of paragraph (2):

''No chemical may be included on the list described in subsection (c) of this section, if the chemical has low toxicity to human health or the environment and if only under unrealistic exposures would such chemical pose one or more of the hazards described in subsection (d)(2)(B) or (d)(2)(C) beyond facility site boundaries. Nothing in this section shall be construed to require the Administrator or a person to carry out a risk assessment under 633 of title 5, United States Code, to carry out a site-specific analysis to establish actual ambient concentrations, or to document adverse effects at any particular location.''

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''Sec.
''601. Definitions.
''602. Regulatory agenda.
''603. Initial regulatory flexibility analysis.
''604. Final regulatory flexibility analysis.
''605. Avoidance of duplicative or unecessary analyses.
''606. Effect on other law.
''607. Preparation of analysis.
''608. Procedure for waiver or delay of completion.
''609. Procedures for gathering comments.
''610. Periodic review of rules.
''611. Judicial review.
''612. Reports and intervention rights.

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''621. Definitions.
''622. Rulemaking cost-benefit analysis.
''623. Agency regulatory review.
''624. Decisional criteria.
''625. Jurisdiction and judicial review.
''626. Deadlines for rulemaking.
''627. Special rule.
''628. Petition for Alternative Method of Compliance.

''SUBCHAPTER III—RISK ASSESSMENTS

''631. Definitions.
''632. Applicability.
''633. Principles for risk assessments.
''634. Petition for review of a major free-standing risk assessment.
''635. Comprehensive risk reduction.
''636. Rule of construction.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''641. Procedures.
''642. Delegation of authority.
''643. Judicial review.
''644. Regulatory agenda.''

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

AMENDMENT NO. 1800

Strike out subsection 625(e) (page 39, lines 18–24 and page 40, lines 1–7).

THE BOSNIA AND HERZEGOVINA SELF-DEFENSE ACT OF 1995

DOLE (AND OTHERS) AMENDMENT NO. 1801

Mr. DOLE (for himself, Mr. LIEBERMAN, Mr. HELMS, Mr. THURMOND, Mr. BIDEN, Mr. D'AMATO, Mr. MCCAIN, Mr. FEINGOLD, Mr. WARNER, Mr. HATCH, Mr. KYL, Mr. MOYNIHAN, Mr. STEVENS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. MACK, Mr. COVERDELL, Mr. PACKWOOD, Mr. MURKOWSKI, and Mr. SPECTER) proposed an amendment to the bill (S. 21) to terminate the United States arms embargo applicable to the Government of Bosnia and Herzegovina; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bosnia and Herzegovia Self-Defense Act of 1995''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) For the reasons stated in section 520 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), the Congress has found that continued application of an international arms embargo to the Government of Bosnia and Herzegovina contravenes that Government's inherent right of individual or collective self-defense under Article 51 of the United National Charter and therefore is inconsistent with international law.

(2) The United States has not formally sought multilateral support for terminating the embargo against Bosnia and Herzegovina through a vote on a United Nations Security Council resolution since the enactment of section 1404 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337).

(3) The United Nations Security Council has not taken measures necessary to maintain international peace and security in Bosnia and Herzegovina since the aggression against that country began in April 1992.

SEC. 3. STATEMENT OF SUPPORT.

The Congress supports the efforts of the Government of the Republic of Bosnia and Herzegovina—

(1) to defend its people and the territory of the Republic;

(2) to preserve the sovereignty, independence, and territorial integrity of the Republic; and

(3) to bring about a peaceful, just, fair, viable, and sustainable settlement of the conflict in Bosnia and Herzegovina.

SEC. 4. TERMINATION OF ARMS EMBARGO.

(a) TERMINATION.—The President shall terminate the United States arms embargo of the Government of Bosnia and Herzegovina, as provided in subsection (b), following—

(1) receipt by the United States Government of a request from the Government of Bosnia and Herzegovina for termination of the United States arms embargo and submission by the Government of Bosnia and Herzegovina, in exercise of its sovereign rights as a nation, of a request to the United Nations Security Council for the departure of UNPROFOR from Bosnia and Herzegovina; or

(2) a decision by the United Nations Security Council, or decisions by countries contributing forces to UNPROFOR, to withdraw UNPROFOR from Bosnia and Herzegovina.

(b) IMPLEMENTATION OF TERMINATION.—The President may implement termination of the United States arms embargo of the Government of Bosnia and Herzegovina pursuant to subsection (a) prior to the date of completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina, but shall, subject to subsection (c), implement termination of the embargo pursuant to that subsection no later than the earlier of—

(1) the date of completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina; or

(2) the date which is 12 weeks after the date of submission by the Government of Bosnia and Herzegovina of a request to the United Nations Security Council for the departure of UNPROFOR from Bosnia and Herzegovina.

(c) PRESIDENTIAL WAIVER AUTHORITY.—If the President determines and reports in advance to Congress that the safety, security, and successful completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina in accordance with subsection (b)(2) requires more time than the period provided for in that subsection, the President may extend the time period available under subsection (b)(2) for implementing termination of the United States arms embargo of the Government of Bosnia and Herzegovina for a period of up to 30 days. The authority in this subsection may be exercised to extend the time period available under subsection (b)(2) for more than one 30-day period.

(d) PRESIDENTIAL REPORTS.—Within 7 days of the commencement of the withdrawal of UNPROFOR from Bosnia and Herzegovina, and every 14 days thereafter, the President shall report in writing to the President pro tempore of the Senate and the Speaker of the House of Representatives on the status and estimated date of completion of the withdrawal operation. If any such report includes an estimated date of completion of the withdrawal which is later than 12 weeks after commencement of the withdrawal operation, the report shall include the operational reasons which prevent the completion of the withdrawal within 12 weeks of commencement.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be interpreted as authorization for deployment of United States forces in the territory of Bosnia and Herzegovina for any purpose, including training, support, or delivery of military equipment.

(f) DEFINITIONS.—As used in this section—

(1) the term ''United States arms embargo of the Government of Bosnia and Herzegovina'' means the application to the Government of Bosnia and Herzegovina of—

(A) the policy adopted July 10, 1991, and published in the Federal Register of July 19, 1991 (58 FR 33322) under the heading ''Suspension of Munitions Export Licenses to Yugoslavia''; and

(B) any similar policy being applied by the United States Government as of the date of completion of withdrawal of UNPROFOR personnel from Bosnia and Herzegovina, pursuant to which approval is denied for transfers of defense articles and defense services to the former Yugoslavia; and

(2) the term ''completion of the withdrawal of UNPROFOR personnel from Bosnia and Herzegovina'' means the departure from the territory of Bosnia and Herzegovina of substantially all personnel participating in UNPROFOR and substantially all other personnel assisting in their withdrawal, within a reasonable period of time, without regard to whether the withdrawal was initiated pursuant to a request by the Government of Bosnia and Herzegovina, a decision by the United nations security Council, or decisions by countries contributing forces to UNPROFOR, but the term does not include such personnel as may remain in Bosnia and Herzegovina pursuant to an agreement between the Government of Bosnia and Herzegovina and the government of any country providing such personnel.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding a hearing on Tuesday, July 25, 1995, beginning at 9:30 a.m., in G–50 of the Dirksen Senate Office Building on S. 487, a bill to amend the Indian Gaming Regulatory Act, and for other purposes.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT

Mr. COHEN. Mr. President, I wish to announce that on Tuesday, July 25, 1995, at 9:30 a.m., in room 342 of the Dirksen Senate Office Building, the Subcommittee on Oversight of Government Management and the District of Columbia, will hold a hearing on S. 946, the Information Technology Management Reform Act of 1995.

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. CAMPBELL. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Parks, Historic Preservation and Recreation.

The hearing will take place Saturday, July 29, 1995 at 10:00 a.m. in the Scott Hart Auditorium of the Department of Agriculture Building in Helena, MT.

The purpose of this hearing is to review S. 745, a bill to require the National Park Service to eradicate brucellosis afflicting the bison in Yellowstone National Park.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Parks, Historic Preservation and Recreation, Committee on Energy and Natural Resources, U.S. Senate, 304 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the subcommittee staff at (202) 224–5161.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Tuesday, July 18, 1995, at 9 a.m., in SR–332, to mark up farm bill titles.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, July 18, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to review existing oil production at Prudhoe Bay, AK and opportunities for new production on the coastal plain of Arctic Alaska.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Tuesday, July 18, 1995, beginning at 9:00 a.m. in room SD–215, to conduct a hearing on deficit reduction fuel taxes and diesel dyeing requirements.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, July 18, 1995, at 2:00 p.m. to hold a hearing on judicial nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Health Insurance Reform, during the session of the Senate on Tuesday, July 18, 1995, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Oversight and Investigations of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, July 18, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:30 p.m. The purpose of this hearing is to examine the first amendment activities, including sales of message-bearing merchandise, on public lands managed by the National Park Service and the U.S. Forest Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON YOUTH VIOLENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Youth Violence of the U.S. Senate Committee on the Judiciary, be authorized to meet during a session of the Senate on Tuesday, July 18, 1995, at 10:00 a.m., in Senate Dirksen room 226, on ''Guns in Schools: A Federal Role?''

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE TO AMEND RULE XXXIV

Mr. BROWN submitted the following notice in writing:

In accordance with Rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to amend Senate Rule 34.

The amendment is as follows:

At the appropriate place, insert the following:

''SEC. . DISCLOSURE OF THE VALUE OF ANY PERSONAL RESIDENCE IN EXCESS OF $1,000,000 UNDER THE ETHICS IN GOVERNMENT ACT OF 1978.

''Rule XXXIV of the Standing Rules of the Senate is amended by adding at the end the following new paragraph:

'3. In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 2 an additional statement under section 102(a) of the Ethics in Government Act of 1978 listing the category of value of any property used solely as a personal residence of the reporting individual or the spouse of the individual which exceeds $1,000,000, as provided in section 102(d)(1).' ''

At the appropriate place in the, insert the following:

''SEC. . DISCLOSURE OF THE VALUE OF ASSETS UNDER THE ETHICS IN GOVERNMENT ACT OF 1978.

''Rule XXXIV of the Standing Rules of the Senate is amended by adding at the end the following new paragraph:

'3. In addition to the requirements of paragraph 1, Members, officers, and employees of the Senate shall include in each report filed under paragraph 2 the following additional information:

'(a) For purposes of section 102(a)(1)(B) of the Ethics in Government Act of 1978 additional categories of income as follows:

'(1) greater than $1,000,000 but not more than $5,000,000, or

'(2) greater than $5,000,000.

'(b) For purposes of section 102(d)(1) of the Ethics in Government Act of 1978 additional categories of income as follows:

'(1) greater than $1,000,000 but not more than $5,000,000;

'(2) greater than $5,000,000 but not more than $25,000,000;

'(3) greater than $25,000,000 but not more than $50,000,000; and

'(4) greater than $50,000,000''.

ADDITIONAL STATEMENTS

U.N. RAPID REACTION CAPABILITY

Mr. SIMON. Mr. President, I learned in reading a newspaper about Canada's

leadership in providing a study on methods of improvement of the U.N. rapid reaction capability.

As many of my colleagues in the Senate know, I have had concerns in this area for some time.

I wrote to Minister of Foreign Affairs Andre Ouellet, and he sent me a letter, which I ask unanimous consent to insert at the end of this statement.

Among other things, he enclosed a background paper, that I also request be inserted at the end of my statement, because it provides practical insights into our situation.

It is interesting that the background paper mentions Rwanda. Senator JEFFORDS and I had the experience of calling a Canadian general, General Daullaire, who was in charge of the small U.N. force in Rwanda when things first started getting difficult. This was in May 1994.

General Daullaire told us that if he could get 5,000–8,000 troops there quickly, the situation in Rwanda could be stabilized.

Senator JEFFORDS and I immediately dispatched a message to the State Department and to the White House.

Nothing of significance happened until October, when the United Nations Security Council authorized action; then the French, to their great credit, immediately sent 2,000 troops to provide a little stability, but the United Nations was slow to act.

We went through a similar situation in Somalia.

Bosnia presents another example of action that is much too slow.

My colleagues know that I have introduced legislation that would authorize up to 3,000 American volunteers among our armed forces to be available on short notice, if the Security Council acts, and the President of the United States approves. I assume other nations would be willing to volunteer a similar, relatively small force.

If the Secretary General of the United Nations had such power at his disposal when authorized by the Security Council, we would not have had some of the difficulties that now threaten our world. And the great threat to the world today is instability.

After the Security Council acted in Somalia, it took 6 weeks to get 500 Pakistani troops to Mogadishu, and when I visited Somalia and found the desperate situation and called the Secretary General about it, he told me that the additional 3,000 troops then authorized would be sent by ship. When I urged that they be sent by plane and that an additional 10,000 troops be sent, he said that our government—the U.S. government—charges so much to send troops by plane that they could not afford it.

I will not go into the rest of the background, but it illustrates the wisdom of the Canadian leadership.

I commend Prime Minister Jean Chretien and Minister of Foreign Affairs Andre Ouellet for their leadership.

And I hope the United States will be an enthusiastic partner and not be a nation that is dragging its feet on this issue.

I urge my colleagues to read the background paper from the Canadian Government. I ask that it be printed in the RECORD.

The material follows:

MINISTER OF FOREIGN AFFAIRS,
Ottawa, Canada, June 8, 1995.

Hon. PAUL SIMON,
U.S. Senate, Washington, DC.

DEAR SENATOR SIMON: Thank you for your letter of February 6, 1995, regarding the Canadian study to improve the United Nations (UN) rapid reaction capability. Your words of support for our efforts are appreciated.

As you are aware, Canada has made UN reform a foreign policy priority. A key element of our position is to ensure that the UN operates with greater efficiency and effectiveness. The Government is committed to the active, continued and effective engagement of the Canadian Forces in international peacekeeping operations.

The aim of the Canadian study is to make practical proposals to enhance the UN's rapid reaction capability in the field of peace operations. My officials are consulting extensively with other interested states to ensure the widest possible support for our initiative. The findings of the study are scheduled to be tabled at the 50th anniversary of the UN General Assembly in the fall of 1995.

For further details of the Canadian study, you may wish to consult the enclosed copies of recent press releases and of my address to the International Conference on Improving the UN's Rapid Reaction Capability.

Once again, thank you for bringing your views to my attention.

Yours sincerely,

ANDRÉ OUELLET.

IMPROVING THE UN'S RAPID REACTION CAPABILITY: A CANADIAN STUDY

INTRODUCTION

At the UN General Assembly in September 1994, Foreign Affairs Minister André Ouellet proposed a concrete step toward the goal of enhancing the UN's responsiveness in the field of peace operations. In committing Canada to making a direct contribution to this end, Mr. Ouellet said:

''The experience of the last few years leads us to believe that we need to explore even more innovative options than those considered to date. Recent peacekeeping missions have shown that the traditional approach no longer applies. As we have seen in Rwanda, rapid deployment of intervention forces is essential.

''In light of the situation, the Government of Canada has decided to conduct an in-depth review of the short-, medium- and long-term options available to use to strengthen the UN's rapid response capability in times of crisis. Among these options, we feel that the time has come to study the possibility, over the long term, of creating a permanent UN military force. We will ask the world's leading experts for their input and will inform all member states of the results of the study.''

The Government of Canada has now begun this extensive study.

CONTEXT

The rapid increase in the size, scope and number of peace operations since the end of the Cold War reflects both the ongoing transformation of the international system and the new expectation that the United Nations can and should play a pivotal role in the emerging global order. There have been both startling successes and troublesome failures among the over 21 new missions launched since 1988. However, no firm consensus has developed regarding how and why UN peace operations succeed, or on when the UN should avoid engagement in a given situation that is not yet amenable to an effective peace mission.

Certainly, there have been many recent improvements in how the UN undertakes peace operations. These range from greater political understanding of the mechanism itself in member state capitals, to enhancement of the means available to the Secretary-General in the Secretariat, to a growing sophistication organizationally and operationally at the level of field missions. Many member states remain actively engaged in promoting these improvements and in working incrementally on the full spectrum of peacekeeping issues.

One particular, seemingly intractable issue that to some extent reflects the broader problems outlined above, is that of responsiveness. A review of several missions over the past five years clearly indicates that a more rapid, coherent response to an emerging crisis could have had a much more dramatic impact on the evolving situation than that which actually occurred. The example of Rwanda illustrates the problem in bold relief. Despite various unco-ordinated indications that a crisis was imminent, even a minimal response had to await the onset of crisis. At this point, the detailed planning and mounting of the operation were excruciatingly slow, with deployment of troops taking place months after they were officially committed.

Improving the UN's rapid reaction capability is not a new theme. The first UN Secretary-General, Trygve Lie, raised the subject as early as 1948. Considerable attention was devoted to this issue as early as 1957 in the aftermath of the successful deployment of UNEF I in the Sinai. The Special Committee on Peacekeeping (Committee of 34) has also devoted considerable energy to the concept in the intervening years. Today, this topic is again near the top of the peacekeeping agenda, with a particular focus on the idea of a UN force as one means to achieve this end.

The resurgence of the theme of enhanced responsiveness reflects a number of recent developments in the international arena. With the end of the Cold War, there is no obvious reason why the UN cannot react more quickly to crisis. The absence of bipolar confrontation, and consequent minimal recourse to the veto on the part of permanent members of the Security Council, as well as the apparent end to rigidly defined spheres of influence, suggest that improved Great Power comity should lead to more effective and efficient international co-operation. At the same time, human rights and humanitarian concerns, once held hostage to the Cold War, have surfaced in a compelling way. This has led to a shift in political and strategic calculations from a strict emphasis on order to a more subtle one, in which the idea of justice enjoys priority. Finally, global media coverage continues to generate domestic and international pressure to act quickly, albeit on a selective basis.

These factors pose challenges to the international community. Equally, they offer opportunities to act constructively in developing the necessary instruments to deal quickly and effectively with genuine threats to international peace and security.

OBJECTIVE

The aim of the study is to make practical proposals to enhance the UN's rapid reaction capability in the field of peace operations.

SCOPE

The Canadian study will analyze the problem of rapid reaction capability from the perspective of the UN system as a whole. The

functions that need to be performed at the political, strategic, operational and tactical levels will be identified. A key component of this analysis will be a clear description of the crucial interrelationships among these levels, based on the premise that deficiencies and inadequacies in any one sphere directly influence success or failure throughout the system. For example, the ready availability of an operational element remains dependent upon both the generation of political will, and adequate ongoing strategic planning and direction for its effectiveness.

The focus of the study will be at the operational and tactical levels. The greatest challenges lie here, given the virtually complete ad hoc nature of mounting today's peace operations and the slow, inefficient assembly of disparate tactical units in the theatre of operations. Even given adequate warning and the existence of strategic plans to react, there is a virtual vacuum at the operational level in the UN system. At present, there is no standing headquarters that is capable of organizing, integrating and directing forces based on common doctrine and standards.

In keeping with the requirement to make practical recommendations that respond to today's needs, as well as the achievement of potential advances in the future, the study will develop proposals for the short, medium and long terms. In this context, the study of the concept of a UN standing force will involve both its feasibility and modus operandi once established over the long term, as well as the relationship between short- and medium-term projects and their possible cumulative contributions to its ultimate creation.

Finally, the study will look at the impact of a standing force on the activities of regional organizations and their capabilities in this area. Regional actors and organizations should have a high motivation to react quickly to emerging crises in their own regions. Similarly, in some important respects at least, they should be inherently more capable of moving quickly into a theatre of operations. The comparative advantages of operating at a global or regional level will be addressed, and proposals will be developed to achieve a balanced effort in accordance with the intent of Chapter VIII of the UN Charter, and along the lines recently advocated by Secretary-General Boutros Boutros-Ghali.

STRUCTURE

The study will be guided by a steering group of senior officials and military officers, co-chaired by the Department of Foreign Affairs and International Trade and the Department of National Defense. The steering group will oversee the study and commission supporting technical studies as appropriate.

In order to provide the broadest possible international input into the study, an international consultative group is being established. This group, drawn from well-known and accomplished diplomats, government officials, soldiers and academics, will review the work in progress and exchange views as the study proceeds. Three conferences will also be organized under the aegis of the study, to which various member states, nongovernmental authorities and specialists will be invited. The first two conferences will draw primarily on Canadian experts, and will focus on the operational/technical and the strategic/political levels, respectively. The third conference will be international in scope, and will be organized around a meeting of the international consultative group in April 1995. The results of all of these conferences will be incorporated into the final report.

Throughout the study process, Canada will consult on a bilateral basis with member states interested in monitoring the progress of and exchanging views on the study. Canada would also hope to collaborate with other member states pursuing similar or complementary ideas.

A key consultative partner during the study will be the UN Secretariat. The steering group will keep the Secretary-General informed of the progress of the study, seek his views as appropriate, and invite relevant Secretariat officials to the conferences.

CONTENT

The study is intended to focus on enhancing the UN's rapid reaction capability. It is not a study on how to improve UN peacekeeping generally. Nonetheless, these two themes have much in common that must be taken into account in the overall context of the study. Therefore, the study will review past experience relevant to the aim of this project, including a review of major concepts and initiatives that represent significant milestones on the road to the present. Particular attention will be paid to developments since the end of the Cold War. Furthermore, the study will be guided by the orientation and concepts articulated by the Secretary-General in An Agenda for Peace. Due regard will be accorded to non-military aspects of peace operations, such as prevention diplomacy, the political component of all such operations and peacebuilding. Peacekeeping will be treated in its broadest context.

The study will focus on the specific issue of improved responsiveness, given the structure and nature of contemporary peacekeeping. This will take account of the interrelationships among the political, strategic, operational and tactical components of any peace operation, as well as the relevance for rapid reaction of the integration of political, humanitarian, police and military elements, including non-governmental organizations (NGOs). Similarly, the study will address the question of command and control systems and their contribution to an improved rapid reaction capability. The conditions under which nations are willing to make their resources available to the UN are crucial to their political commitment and readiness to act. Paramount among these concerns is the nature and competence of command and control structures and relationships. The role of the Security Council in mobilizing political support and providing ongoing guidance is essential.

The study will elaborate the component elements of a rapid reaction capability in a generic sense. This section of the study will address the requirement for, and provision of, among other things, early warning, integrated planning capability, command and control systems, logistics capability and doctrine/standards/interoperability. An important element will be the nature of standing forces, options for their development and a discussion of their potential utility.

Having established the basis for rapid reaction, the study will address in concrete terms what can be done to achieve this capability. The study will outline proposals that logically fit into one of the three time frames envisaged. The implications of a given proposal at one of the four levels (political, strategic, operational and tactical) for the remaining levels will be explored. For example, the establishment of regional stocks in two or more locations has direct implications for how these stocks will be allocated and co-ordinated at the strategic level in New York.

In many cases, short-term proposals will suggest additional measures that might logically follow in the medium and long terms. For example, virtually all proposals for the medium and long term imply an increased capability in the UN Secretariat to cope with additional responsibilities. Therefore, reform and enhancement of the UN Secretariat, a necessary stand-alone requirement to enhance the UN's rapid reaction capability, will also cumulatively establish the necessary strategic apparatus to handle a series of additional medium- and long-term improvements.

Any plan to operate a standing force presupposes adjustments at the political, strategic and tactical levels, which in many cases must be put in place on an incremental basis, starting as soon as possible.

The study will arrive at recommendations and conclusions regarding the desirability and feasibility of implementing a variety of potential measures. It will also make observations and recommendations as to their associated costs.

The study will be submitted to the membership of the UN at the General Assembly in September 1995, and presented to the Secretary-General for his consideration.

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

● Mr. MCCONNELL. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for Robert McArthur, a member of the staff of Senator COCHRAN, to participate in a program in Germany sponsored by the Hanns Seidel Foundation from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. McArthur in this program.

The select committee received notification under rule 35 for Mary Parke, a member of the staff of Senator SIMON, to participate in a program in Germany sponsored by the Friedrich-Naumann-Stiftung Foundation from May 27 to June 3, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Parke in this program.

The select committee received notification under rule 35 for Jonathan M. Harris, a member of the staff of Senator D'AMATO, to participate in a program sponsored by the Korea Economic Institute of America to be held in Korea from May 28 to June 4, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Harris in this program.

The select committee received notification under rule 35 for Reid Cavnar, a member of the staff of Senator SHELBY, to participate in a program in Taiwan sponsored by the Tamkang University from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Cavnar in this program.

The select committee received notification under rule 35 for Ridge Schuyler, a member of the staff of Senator ROBB, to participate in a program in Taiwan sponsored by the Tamkang University from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Schuyler in this program.

The select committee received notification under rule 35 for Pamela Sellars, a member of the staff of Senator COATS, to participate in a program in Germany sponsored by the Hanns Seidel Foundation from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Sellars in this program.

The select committee received notification under rule 35 for John Luddy, a member of the staff of Senator INHOFE, to participate in a program in Germany sponsored by the Hanns Seidel Foundation from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Luddy in this program.

The select committee received notification under rule 35 for Robert H. Carey, Jr., a member of the staff of Senator ABRAHAM, to participate in a program in Germany sponsored by the Hanns Seidel Foundation's Institute for Foreign Relations from July 1 to 8, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Carey in this program.

The select committee received notification under rule 35 for Chad Calvert, a member of the staff of Senator SIMPSON to participate in a program in Japan sponsored by the Association for Communication of Transcultural Study Foundation.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Calvert in this program.

The select committee received notification under rule 35 for Dr. William Spriggs, a member of the staff of Senator MACK, to participate in a program in Berlin sponsored by Wissenschaftszentrum Berlin fur Sozialforschung from June 29 to July 3, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Dr. Spriggs in this program.

The select committee received notification under rule 35 for Wayne Abernathy, a member of the staff of Senator GRAMM, to participate in a program in Mexico sponsored by the Mexican Business Coordinating Council from July 4 to 7, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Abernathy in this program.

The select committee received notification under rule 35 for Derek L. Schmidt, a member of the staff of Senator KASSEBAUM, to participate in a program in Korea sponsored by the Korea Economic Institute of America from May 28 to June 4, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Schmidt in this program.●

METAMORPHOSIS OF A CONTINENT

Mr. SIMON. Mr. President, the Chicago Tribune carried a remarkable story from Timbuktu, Mali by Liz Sly on what is happening in Africa. Really, it is two stories that are intertwined.

I wish it were possible to put into the RECORD the maps and color shadings to provide a more accurate picture of some of the things that are illustrated in this article.

But those who read the article will note that Africa is a place of hope and promise and despair.

The little-known story of the spread of democracy in Africa is the story of progress that could be reversed easily.

Africa needs our helping hand.

I ask that the Liz Sly article be printed in the RECORD.

The article follows:

[From the Chicago Tribune, July 9, 1995]

METAMORPHOSIS OF A CONTINENT—DEMOCRACY SEEKS HOLD AMID POVERTY, VIOLENCE

(By Liz Sly)

TIMBUKTU, MALI.—Not all of the news out of Africa is bad.

For the first time in its long history, this remote town on the edge of the Sahara has a mayor elected by the people, Harber Sabane, 51, who has high hopes that democracy will help Timbuktu reclaim its status as one of the world's great cities.

First, he acknowledged, there are a number of problems to be ironed out.

''We have problems of development,'' Sabane said. ''We don't have roads. We have a problem of water. We don't have infrastructure. Our ecological system is destroyed because of a lot of droughts and we have a problem of deforestation.

''Another problem is unemployment. We have no industry. We are very, very, very poor. Most people are illiterate and 60 percent of our children don't go to school.''

Unfortunately, Sabane could have been describing just about anywhere in sub-Saharan Africa. Once synonymous with everything that was exotic and alluring about the continent, Timbuktu today is typical of everything that is wrong with it—even down to the ethnic fighting last year that killed an estimated 600 people and scared away the tourists, the town's only source of outside income.

By 1990, it had long been clear that sub-Saharan Africa was torn by crises. Poverty, conflict and underdevelopment were compounded by corrupt dictators who enjoyed the backing of rival superpowers concerned more with their own strategic agendas than with human rights or economic progress.

This, however, was supposed to be Africa's ''democracy decade'' in which the dictators, bereft of their Cold War relevance, would be replaced by elected, accountable governments heralding a new era of freedom and prosperity.

Halfway through the 1990s, those goals are elusive as ever for most parts of the continent. Instead, Africa's democracy decade risks becoming yet another decade of disappointment. Millions of Africans are still waiting for life to improve after more than three decades of freedom from colonialism.

A woeful array of collapsed states, hijacked elections and ethnic conflicts litter the landscape south of the Sahara. And even where democracy is taking root, Africa's hopes of a brighter future are in danger of being buried under the weight of its multiple problems, as Sabane is discovering in Timbuktu.

''The world around Africa is fast coming together and this continent risks being the odd man out,'' warned U.S. National Security Adviser Anthony Lake on a recent visit to the continent, summing up the world's growing impatience with Africa's failure to find its way in the post-Cold war world.

Chaotic Liberia, Somalia and Rwanda stand out as worst case examples of that failure. The 1990s saw Cold War-inspired conflicts in Ethiopia and Mozambique come to and end. But 2 million Africans have died since the collapse of the Berlin Wall as a result of new wars unleashed directly or indirectly by pressures from the democratic reforms that were supposed to bring them new hope—10 times the number who have died in the war in Bosnia.

A recent report from the London-based International Institute of Strategic Studies found some form of conflict in 26 of sub-Saharan Africa's 48 countries, offering a gloomy assessment for the future. ''The potential for sudden outbursts of violence exists in most [African] countries as rising populations meet falling living standards and weak governments confront regional or ethnic movements,'' it said.

But is Africa's outlook really that bleak? It is just 50 years since the world ended a war that killed 60 million people, and many Africans plead that it is unfair to write off Africa now just because it is going through a period of upheaval.

''From the outside, the universal view is one of despair, and it must be tempting to repudiate the whole continent,'' said political scientist Mahmood Mamdani, director of the Center for Basic Research in Uganda's capital, Jampala. ''But when one lives here, one recognizes the extent of the problems but also the small improvements that are taking place.''

For better or worse, the 1990s already have proved revolutionary for Africa. Until 1990, Africa had only three governments that could be considered authentically democratic. Since then, multiparty elections have been held in 35 of sub-Saharan Africa's 48 nations.

From the sandswept streets of Timbuktu to the stately monuments of Cape Town, South Africa, new leaders are experimenting with new ways to address Africa's problems, and new freedoms are flourishing in places that once knew only repression and dictatorship.

Some have proved unexpected success stories, such as South Africa, where the leadership of President Nelson Mandela and the spirit of reconciliation that he represents shine like a beacon of hope for the rest of the continent. Benin, Malawi, Zambia and Namibia are among other countries that have peacefully managed the transition to democracy.

Africa's seeming tendency toward violence should be seen in the context of these seismic changes, argues Gen. Amadou Toumani Toure. He helped bring democracy to Mali,

the modern state of which Timbuktu is a part, by overthrowing its hated dictator in a military coup and then handing over power to an elected civilian government.

''Africa is in the throes of a radical transformation,'' Toure said. ''After 30 years of military dictatorship or one-party rule, we are moving to democracy. Sometimes that process is violent, and it gives the impression Africa is in crisis.

''Rwanda, Somalia, Liberia, these are all struggles for power in the new order. Some leaders are resisting change. But take Senegal, Mali, Zambia, where people have chosen the ballot over the bullet.

''Africa does have a future. But each country in history has gone through crisis in arriving at its future. America had a revolution. Europe had many wars. Africa also is in the process of finding its future.''

But where does Africa's future lie? With South Africa, which also underwent violence before peacefully embracing change? Or with Somalia and Liberia, which have disintegrated into chaos?

The prognosis for most African countries seems to be hovering precariously between these extremes. Just 17 of the continent's 35 elections have heralded genuinely democratic forms of government, according to a study by the Center for Strategic and International Studies.

In countries such as Burkina Faso, Ghana and Kenya, dictators were voted back into power in questionable elections, and they continue to rule with little regard for democratic principles. In others, such as Nigeria and Zaire, corrupt regimes continue to resist change, making these nations candidates for possible future upheaval.

Mali is typical of those new democracies that are genuinely trying to improve the lives of their people. But they are doing so against a backdrop of poverty, ethnic rivalry and falling Western aid budgets, all of which threaten to confound even the best-intentioned efforts.

Do-or-die economic reforms, ordered by the World Bank as a prerequisite for continued international aid, have produced economic growth in some countries that previously had known only stagnation or decline. But the reforms are causing considerable hardship among ordinary people, threatening these fragile new systems with popular discontent.

Poverty is already a key dynamic fueling conflict in Africa, something overlooked by Toure's interpretation of Africa's crises as the inevitable byproduct of political transformation.

In Mali, which the United Nations ranked the world's seventh poorest country, 1992's peaceful democratic elections coincided with an eruption of hostilities between Tuareg nomads and local Malians in the desert region around Timbuktu.

Although these two groups have fought one another in the past, both sides blame the recent fighting not on ethnic differences but on the country's desperate economic situation. Along the fringes of the Sahara, poverty has been deepened by harsh droughts in the 1970s and 1980s that turned former arable land into desert.

''It's poverty and bad economic conditions that cause this antisocial behavior,'' said Timbuktu's Mayor Sabane of the fighting, which has subsided.

''The causes of the fighting are economic,'' agreed Mohamed Ag Ahmed, a leader of one of the Tuareg factions, the Movement and United Fronts of Azawad, which is demanding development aid for Tuaregs in peace talks with the government.

''We could all live on the same land without conflict. But the useful space has shrunk over time. The population of Mali increases 3.5 percent a year, and now there is less land available for an increasing number of people year after year.''

The simple logic applies to many parts of the continent. Falling living standards, environmental degradation and high population growth rates risk pushing already impoverished communities to the brink of their capacity to survive, and into competition for scarce resources. It is perhaps no accident that Africa's worst crises of the 1990s all have occurred in nations ranked among the continent's poorest half.

Yet there is no reason why Africa should be as poor as it is. A recent International Monetary Fund survey notes that Africa's ''overall low level of economic growth is anything but foreordained.''

Sub-Saharan Africa's 540 million people account for 10 percent of the world's population, living on about 15 percent of the Earth. Their land is potentially some of the world's richest, blessed with half the world's gold, most of its diamonds, 40 percent of its platinum and rich reserves of other minerals, oil and natural gas.

But Africans share only 1.3 percent of the world's actual wealth, and a disproportionate burden of the world's suffering. According to the CIA, two-thirds of those in the world risking starvation this year live in Africa. Africa contains 62 percent of the world's AIDS cases and one-third of its refugees.

Africa's entire gross domestic product is smaller than that of the Netherlands, with a population of just 15 million.

Also, Africa is the only part of the developing world where living standards have fallen over the past decade. Despite receiving nearly half the world's total annual aid—$20 billion a year in the 1990s—the average African is no better off today than he or she was at independence from colonialism more than three decades ago.

What brought Africa to this sorry point in its history? Colonialism undoubtedly played a part in setting independent Africa off on the wrong foot, said professor George Ayittey, a Ghanaian national and professor of economics at the American University in Washington.

Independence also proved a hollow word for Africans, for no sooner had they cast off their colonial rulers than Cold War politics intervened to create a new form of foreign interference. Western powers and the Soviet bloc poured billions of dollars into propping up unsavory dictators—$100 billion in the 1980s alone—long after it was apparent that they had no popular support.

But increasingly, Africans are starting to realize that their own leaders are to blame for their plight, Ayittey said.

''The basic reason why we're having all this chaos in Africa is because we had bad leadership,'' Ayittey said. ''The colonial state was very authoritarian but those who took over made things worse.''

Uncounted billions of those aid dollars, which could have gone toward building roads or educating children, were squirreled away into Swiss bank accounts for Africa's leaders or spent on weaponry to keep them in power, while ordinary Africans grew steadily poorer.

With the lifting of outside support for Africa's dictators, many of their nations have been exposed as hollow shams, as personal piggy-banks for narrow elites who had failed to unite their multiethnic populations behind them.

In finding its future, Africa therefore has not only to battle harsh new economic realities, but also cope with the burdensome legacy of its past mistakes.

And it can no longer count on the largesse of the outside world to help it through. The West already has given notice that African leaders who fail to heed the new rules of fair play and accountability will have their aid suspended. Yet even those who do can expect no democracy bonanza; in the U.S., a Republican congress is threatening to slash overall aid levels to Africa, and Europe is also cutting aid.

In Timbuktu, a city that lured countless European explorers to their deaths in their quests for its wealth, Mayor Sabane pleads with the world not to forsake Africa now.

''In Africa, we are apprentices in democracy. We need help,'' he said.

''The current generation is very worried about our situation and wants to lift us out of this malaise and improve our lives. But we must have friendship so that Africa can renew itself and find itself in the modern world.''

But could it be too late for a continent that, time and again, has failed to seize opportunities? Will the legacy of mistakes prove insurmountable? Are ordinary Africans, betrayed so many times by past leaders, in the process of being betrayed again?

Or is the continent merely witnessing the death throes of the old order and the birth pangs of a new era, as most Africans would like to believe?

''There is a saying in Africa, 'never lose hope,''' Sabane said.

''We don't lose hope.''●

GOVERNMENT SUBSIDY FEEDS FREE MARKET

● Mr. SIMON. Mr. President, Tom Roeser of the Chicago Sun-Times is someone I disagree with frequently, even though I respect him.

On the whole question of assistance for minority businesses, he had a column in the Chicago Sun-Times recently that spoke candidly about something that provides real insight.

As we discuss affirmative action and what should be done to assist in providing opportunities for minorities, I recommend required reading of the Tom Roeser column, and I ask that it be printed in the RECORD at this point.

The column follows:

[From the Chicago Sun-Times, July 7, 1995]

GOVERNMENTAL SUBSIDY FEEDS ''FREE MARKET''

(By Thomas F. Roeser)

Not long after I became an assistant secretary of commerce under President Richard Nixon, I stumbled upon an amazing discovery.

The big business community (mostly white-owned), which had long extolled ''free'' enterprise since the founding of this republic, was hooked far more than I realized on government subsidies.

The Cato Institute has just cataloged 125 programs in the federal budget designed to assist ''business''—meaning, of course, mostly white-owned businesses. When I was sworn in, in 1969, I counted roughly $13 billion worth of subsidies. Cato's figure today is $53.7 billion.

The gist of Cato's recommendation is that these subsidies be cut. Very well. But recall that it is mostly white-owned industries that have thus profited since the founding of the republic.

It was clear that I was picked as assistant secretary for minority enterprise because, as a white conservative, I could be fired by a mostly white administration without prompting a racial furor. One recommendation I made lasted: Take a percentage of federal contracts—I called them ''set-asides''—

and give them to minority-owned businesses. I recommended a 10-year program, after which it would be terminated. It has just now been challenged by the Supreme Court 25 years later.

It was the second proposal, however, that got me fired: Take a tiny percentage of the federal subsidies given to white industry and apportion them to qualifying minority enterprises. The strategy paper containing this recommendation, when sent to the president, resulted in my termination.

No problem. I went back to private industry, happier and wiser than when I had left it. All my life I have been judged a conservative. But I must tell you that whenever big business pays tribute to its growth by mistily referring to itself as ''private enterprise,'' I am impelled to raise the window sash for fresh air. As a government official, I learned too much.

Let's remember, when we wonder what happened to minority enterprise, that white-owned business has leaned heavily on government as on a crutch while its leaders pretend, in speeches to chambers of commerce, that they do not.

This has meant that, for the most part excluding my set-asides, only minority-owned businesses have been expected to practice what white pro-business executives so eagerly trumpet as ''free market capitalism.''●

PUBLIC BROADCASTING AND TELEVISION VIOLENCE

● Mr. SIMON. Mr. President, today, I would like to draw my colleagues' attention to two recent articles from Current magazine about public television.

One story details the positive contributions of public television in the important area of children's programming. Many have long argued that in addition to its entertainment value, television can be used as a powerful educational resource, particularly for children. Public television has consistently set the standard for putting television to use for this purpose.

''Sesame Street,'' one of public television's most successful shows, is a favorite for many American children, and indeed for children around the world. Its goals, however, are much loftier than merely entertaining, or marketing to, children. ''Sesame Street'' works to teach children and prepare them for school. And it is succeeding. In fact, a 4-year study of more than 250 low-income households conducted by the Center for Research on the Influence of Television on Children at the University of Kansas concluded that preschoolers who watch ''Sesame Street'' regularly score higher on school readiness tests as long as 3 years later.

I am also pleased to report that the American people recognize the value of public television as a public resource. The second Current article examines the high level of public support that public broadcasting enjoys across the country. According to the article, a Roper poll taken in March revealed that Americans ranked public television and radio among the services that provide the best value for the tax dollars. In fact, over 50 percent of those polled rated public television and radio as either excellent or good value.

In this age of television's appeal to the lowest common denominator, public broadcasting generally succeeds in broadening, edifying, and challenging its viewers, and influencing the television medium for the good. Most importantly, public television reaches 99 percent of American households—for free.

I ask that these two articles be printed in the RECORD.

The articles follow:

[From Current, June 19, 1995]

PUBLIC RANKS PUBCASTING HIGH IN VALUE PER DOLLAR

In a Roper Poll taken in March, Americans ranked public TV and public radio among the services that provide the best value for the tax dollar.

Only military defense of the country and the police had higher percentages of the sample calling them an ''excellent value'' or a ''good value.'' Highways, public schools, environmental protection and the court system ranked lower.

''Quite frankly, I was really surprised,'' said CPB researcher Janice Jones. ''I know that people value public television, but there are a lot of core services on that list.''

CPB received the poll results as a regular subscriber to the Roper Poll last month, but the survey firm had added pubcasting to the annual question without CPB asking it to do so, Jones said.

Other tax-supported services had been rated in the poll for many years. The biggest changes between 1986 and 1995 showed environmental protection up 14 points, public transportation up 12, roads and bridges up 11, the police up 9 and military defense up 8 points. Even social welfare programs rose 4 points during that period.

In the poll, public TV was scored an ''excellent value'' by 13 percent, ''good'' by 44 percent, ''fair'' by 24 percent and ''poor'' by just 10 percent. Eight percent said ''don't know.''

Public radio got similar scores: ''excellent value,'' 10 percent; ''good,'' 43 percent; ''fair,'' 28 percent; ''poor,'' 10 percent, and ''don't know,'' 10 percent.

Public TV's ''excellent value'' rating (13 percent) was exceeded only by military defense (17 percent) and the space program (14 percent).

The percentage of respondents who rated public TV and radio as a ''poor value'' for the tax dollar, 10 percent, was lower than all other services except defense and international intelligence gathering.

VALUE FOR THE TAX DOLLAR

Here is a list of some different services that the government provides using tax dollars it collects from the public. Thinking of what you get for what you pay in taxes, would you read down that list and for each one tell me whether you feel you get excellent value for the dollar, or good value, or only fair value for the dollar, or poor value for the dollar?

Rank and services provided with tax dollars	Percent excellent or good value
1. Military defense of the country	60
2. Police and law enforcement agencies	59
3. Public TV broadcasting	57
4. Public radio broadcasting	53
5. Medical, technological and other research	52
6. Overseeing the safety of food products	50
7. The space program	49
8. Overseeing the safety of prescription drugs	49
9. Highways, roads and bridges	45
10. Public schools	41
11. Environmental protection	41
12. Public transportation	40
13. Sponsorship of the arts	39
14. Overseeing soundness of financial institutions	35
15. The courts	33
16. International intelligence gathering	31
17. Contributions to the United Nations	30
18. Social welfare programs	28

Source: Roper Poll, March 18–25, 1995, courtesy of CPB.

STUDY DETECTS ''SESAME STREET'' IMPACT ON KIDS

Sesame Street, probably the most-studied children's program on TV, has another accolade for its collection: A major study concludes preschoolers who watch the show regularly score higher on school readiness tests as long as three years later.

The four-year study of more than 250 low-income families was conducted by John C. Wright and Aletha C. Huston of the Center for Research on the Influence of Television on Children (CRITC) at the University of Kansas.

Wright and Huston's report, released May 31, was meant to provide the first overall evaluation of Sesame Street since the groundbreaking program's second season, in 1971.

The children studied were either two or four years old at the beginning and five or seven at the study's end. About 40 percent were African-American, 40 percent were European-American, and 20 percent were Hispanic.

Key findings from the report:

As early as age two, preschoolers who watched Sesame Street and other educational programming scored higher on standardized tests of verbal and math abilities. The more they watched the show, the better they did on the tests, even two to three years later.

The younger the child was when viewing, the stronger Sesame Street's positive influence on school readiness.

Children who watch Sesame Street spent more time reading and pursuing other educational activities than non-viewers.

Children who regularly watched adult and children's non-educational programming performed less well on school readiness tests and spent less time reading or pursuing other educational activities.

The findings held true even after researchers used statistical controls to account for effects of income level, parental education, English-speaking ability, and other factors on the scores.

''Television is a marvelous medium for education that is vastly untapped. . . . The more you watch good programming, the better you do when you get to school. That's news; that's important,'' said Wright.

Although the study looked at all educational children's programming—not just Sesame Street—the Children's Television Workshop production so dominated preschoolers' viewing it was analyzed separately in Wright and Huston's report.

Because the period studied was 1989–93, newer programs like Barney and Friends and Lamb Chop's Play-Along hadn't been around long enough to make the most-viewed list, and PBS had not yet initiated its PTV Ready to Learn service.

Wright and Huston's report reinforced the findings of a less detailed study with a much larger sample size (10,000 children) released in April.

The CPB—commissioned study, prepared by Westat Inc., found that four-year-old preschoolers who watched one or more PBS programs were more likely to be able to identify colors, count to 20, recognize letters of the

alphabet, and tell connected stories when pretending to read.●

ORDERS FOR WEDNESDAY, JULY 19, 1995

Mr. SPECTER. Mr. President, as the last Republican Senator on the floor, I have been asked to proceed with the closing of the body.

I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m. on tomorrow, Wednesday, July 19; that, following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, there then be a period for morning business until the hour of 9:30, with Senators permitted to speak for up to 5 minutes each; and, further, that the Senate then immediately resume consideration of S. 21, the Bosnia legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SPECTER. Mr. President, for the information of all Senators, the Senate will resume consideration of the Bosnia legislation and the pending Dole substitute amendment.

All Members should, therefore, be aware that rollcall votes may occur throughout Wednesday's session of the Senate. Also, under the provisions of the prior consent agreement, the majority leader may return to the consideration of the regulatory reform bill by a call for the regular order. Therefore, rollcall votes may occur on that legislation as well, including a third cloture vote on the Dole-Johnston substitute amendment.

RECESS UNTIL 9 A.M. TOMORROW

Mr. SPECTER. Mr. President, if there is no further business to come before the Senate—and I note the absence of any other Senator on the floor—I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:23 p.m., recessed until tomorrow, Wednesday, July 19, 1995, at 9 a.m.